



# IOWA ADMINISTRATIVE BULLETIN

*Published Biweekly*

VOLUME XXVI

May 12, 2004

NUMBER 23

Pages 1789 to 1844

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The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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## CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC  
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441 IAC 79 (Chapter)

441 IAC 79.1(249A) (Rule)

441 IAC 79.1(1) (Subrule)

441 IAC 79.1(1)“a” (Paragraph)

441 IAC 79.1(1)“a”(1) (Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication  
date), (page number), (ARC number).

## Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
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Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
***Nov. 17***	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
***Dec. 15***	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Friday, May 21, 2004	June 9, 2004
26	Friday, June 4, 2004	June 23, 2004
1	Friday, June 18, 2004	July 7, 2004

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

## PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies  
FROM: Kathleen K. Bates, Iowa Administrative Code Editor  
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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#### ADMINISTRATIVE SERVICES DEPARTMENT[11]

Disposal of state personal property, adopt ch 111 IAB 4/28/04 <b>ARC 3315B</b>	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	May 18, 2004 11 a.m.
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#### DENTAL EXAMINERS BOARD[650]

General, amendments to chs 1, 6, 10, 12, 13, 15, 16, 20, 22, 25, 27, 28, 30, 31, 51 IAB 5/12/04 <b>ARC 3347B</b>	Board Conference Room Suite D 400 SW Eighth St. Des Moines, Iowa	June 1, 2004 10 a.m.
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#### ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Housing fund, 25.2, 25.4 to 25.9 IAB 5/12/04 <b>ARC 3336B</b>	First Floor Northwest Conference Room 200 E. Grand Ave. Des Moines, Iowa	June 1, 2004 2:30 p.m.
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#### EDUCATIONAL EXAMINERS BOARD[282]

Code of professional conduct and ethics, rescind chs 12, 13; adopt ch 25 IAB 4/28/04 <b>ARC 3311B</b>	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 18, 2004 3 p.m.
Class E license, 14.131 IAB 4/28/04 <b>ARC 3313B</b>	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	May 18, 2004 1 p.m.

#### EDUCATION DEPARTMENT[281]

Open enrollment, 17.2, 17.3, 17.6, 17.8, 17.10, 17.14 IAB 5/12/04 <b>ARC 3331B</b> (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 1, 2004 3 p.m.
	West High School 425 E. Ridgeway Ave. Waterloo, Iowa	June 1, 2004 3 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	June 1, 2004 3 p.m.
	Great River AEA 3601 West Avenue Rd. Burlington, Iowa	June 1, 2004 3 p.m.
	Mason City High School 1700 Fourth SE Mason City, Iowa	June 1, 2004 3 p.m.

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**(ICN Network)**

	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	June 1, 2004 3 p.m.
	Loess Hills AEA 24997 Highway 92 Council Bluffs, Iowa	June 1, 2004 3 p.m.
	Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	June 1, 2004 3 p.m.
	Central High School 1120 Main St. Davenport, Iowa	June 1, 2004 3 p.m.
Educating the homeless, amendments to ch 33 IAB 5/12/04 <b>ARC 3330B</b> <b>(ICN Network)</b>	Second Floor Grimes State Office Bldg. Des Moines, Iowa	June 1, 2004 1 p.m.
	West High School 425 E. Ridgeway Ave. Waterloo, Iowa	June 1, 2004 1 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	June 1, 2004 1 p.m.
	Great River AEA 3601 West Avenue Rd. Burlington, Iowa	June 1, 2004 1 p.m.
	Mason City High School 1700 Fourth SE Mason City, Iowa	June 1, 2004 1 p.m.
	State Room, AEA 267 9184 B 265th St. Clear Lake, Iowa	June 1, 2004 1 p.m.
	Room 103, AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	June 1, 2004 1 p.m.
	AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	June 1, 2004 1 p.m.
	Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	June 1, 2004 1 p.m.
	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	June 1, 2004 1 p.m.
	Loess Hills AEA 24997 Highway 92 Council Bluffs, Iowa	June 1, 2004 1 p.m.

**EDUCATION DEPARTMENT[281] (Cont'd)**  
**(ICN Network)**

Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	June 1, 2004 1 p.m.
Central High School 1120 Main St. Davenport, Iowa	June 1, 2004 1 p.m.
Prairie Lakes AEA Hwy. 18 and Second St. Cylinder, Iowa	June 1, 2004 1 p.m.
Prairie Lakes AEA 330 Avenue M Fort Dodge, Iowa	June 1, 2004 1 p.m.
AEA 267 909 S. 12th St. Marshalltown, Iowa	June 1, 2004 1 p.m.
Southern Prairie AEA 2814 N. Court St. Ottumwa, Iowa	June 1, 2004 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

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Surface water quality criteria, 61.3 IAB 4/14/04 <b>ARC 3282B</b>	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	May 14, 2004 1 p.m.
Discarded appliance demanufacturing, amendments to ch 118 IAB 5/12/04 <b>ARC 3359B</b>	Fourth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 2, 2004 1 p.m.
Electronics recycling, adopt ch 122 IAB 5/12/04 <b>ARC 3358B</b>	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 1, 2004 1 p.m.

**NATURAL RESOURCES DEPARTMENT[561]**

The Iowa nature store, adopt ch 11 IAB 5/12/04 <b>ARC 3357B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 3, 2004 11 a.m.
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General, chs 1 to 16 IAB 4/28/04 <b>ARC 3321B</b>	Holmes Murphy Bldg. 420 Watson Powell Jr. Way Des Moines, Iowa	May 18, 2004 10 a.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Fire fighter certification, 54.1 to 54.204 IAB 4/14/04 <b>ARC 3294B</b>	Fire Service Training Bureau 3100 Fire Service Rd. Ames, Iowa	June 3, 2004 9:30 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Firefighter plates, 401.9 IAB 5/12/04 <b>ARC 3332B</b>	Conference Room, Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	June 3, 2004 10 a.m. (If requested)
School transportation services provided by regional transit systems, amendments to ch 911 IAB 4/28/04 <b>ARC 3305B</b>	Modal Division Conference Room 800 Lincoln Way Ames, Iowa	May 20, 2004 10 a.m. (If requested)

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

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## ARC 3347B

## DENTAL EXAMINERS BOARD[650]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dental Examiners hereby gives Notice of Intended Action to amend Chapter 1, "Administration"; Chapter 6, "Public Records and Fair Information Practices"; Chapter 10, "General Requirements"; Chapter 12, "Dental and Dental Hygiene Examinations"; Chapter 13, "Special Licenses"; Chapter 15, "Fees"; Chapter 16, "Prescribing, Administering, and Dispensing Drugs"; Chapter 20, "Dental Assistants"; Chapter 22, "Dental Assistant Radiography Qualification"; Chapter 25, "Continuing Education"; Chapter 27, "Standards of Practice and Principles of Professional Ethics"; Chapter 28, "Designation of Specialty"; Chapter 30, "Discipline"; Chapter 31, "Complaints and Investigations"; and Chapter 51, "Contested Cases," Iowa Administrative Code.

These amendments make various technical corrections and clarifications to the rules of the Board of Dental Examiners. Some of the specific changes include the following:

Items 6 and 7 require a dental hygienist to obtain a passing score, as established by the Central Regional Dental Testing Service (CRDTS), for dental hygiene licensure by examination. CRDTS recently changed the passing score.

Items 9 and 14 of the amendments require faculty permit holders to submit evidence of current certification in cardiopulmonary resuscitation (CPR) at the time of renewal for consistency with license and registration renewal requirements.

Items 12 and 13 of the amendments shorten the time period for late renewal of a registration to be consistent with the time period for late renewal of a dental or dental hygiene license.

Item 15 of the amendments changes the length of time in which dental records must be retained for consistency with the statute of limitations as specified in Iowa Code section 614.1.

Items 19 and 21 clarify that the Board has the authority to subpoena evidence, whether or not it is privileged or confidential under the law, in connection with a licensee disciplinary investigation or contested case proceeding. This clarification is consistent with Iowa Code sections 17A.13(1) and 272C.6(3), and a ruling by the Iowa Supreme Court in *Portz v. Board of Medical Examiners*, 563 N.W.2d 592 (Iowa 1997).

Item 20 of the amendments corrects a reference to the time period in which a licensee or registrant must file a mandatory report as specified in 650—30.13(272C), which requires a report to be filed within seven days.

These amendments are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7. However, the amendments in Items 10, 15, and 17 are not subject to waiver pursuant to rules 15.9(17A,147,153,272C), 27.12(17A,147,153,272C) and 30.4(147,153,272C).

Any interested person may make written comments or suggestions on the proposed amendments on or before June

1, 2004. Such written comments should be directed to Jennifer Hart, Executive Officer, Board of Dental Examiners, 400 SW 8th Street, Suite D, Des Moines, Iowa 50309-4687. E-mail may be sent to [jhart@bon.state.ia.us](mailto:jhart@bon.state.ia.us).

Also, there will be a public hearing on June 1, 2004, beginning at 10 a.m. in the Board Conference Room, 400 SW 8th Street, Suite D, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Board and advise of specific needs.

These amendments were approved at the April 21, 2004, regular meeting of the Board of Dental Examiners.

These amendments are intended to implement Iowa Code chapters 17A, 147, 153, and 272C.

The following amendments are proposed.

ITEM 1. Amend rule **650—1.1(153)** by adopting the following **new** definition in alphabetical order:

"Accredited school" means a dental, dental hygiene, or dental assisting education program accredited by the American Dental Association Commission on Dental Accreditation.

ITEM 2. Amend subrule **6.13(2)**, paragraph "**f**," as follows:

f. Information contained in professional substance abuse reports or other investigative reports relating to the abuse of controlled substances. (Iowa Code section 204.504 124.504)

ITEM 3. Amend subrule **6.14(3)**, paragraph "**a**," as follows:

a. Formal charges and notices of hearings and final written decisions imposing sanctions, including informal stipulations and settlements. This information is collected by the board pursuant to the authority granted in Iowa Code sections 153.23 and 153.33, and chapter 272C. This information is stored *electronically and on paper only*. This information is a public record pursuant to Iowa Code sections 272C.5 and 272C.6.

ITEM 4. Amend subrule 6.15(3) as follows:

**6.15(3)** Board decisions, findings of fact, final orders, declaratory rulings *and orders*, and other statements of law or policy issued by the board in the performance of its function. This information is stored *electronically or on paper only*.

ITEM 5. Amend rule 650—10.2(147,153) as follows:

**650—10.2(147,153) Display of license, registration, permit, and renewal.** The license to practice dentistry or dental hygiene or the registration as a dental assistant and the current renewal must be prominently displayed by the licensee or registrant at each permanent practice location. *A dentist who holds a permit to administer deep sedation/general anesthesia or conscious sedation, or a dental hygienist who holds a permit to administer local anesthesia, shall also prominently display the permit and the current renewal at each permanent practice location.*

**10.2(1)** No change.

**10.2(2)** Duplicate licenses, ~~or~~ certificates of registration, *or permits* shall be issued by the board upon satisfactory proof of loss or destruction of the original license, ~~or~~ certificate of registration, *or permit*.

This rule is intended to implement Iowa Code sections 147.7, 147.10 and 147.80(17).

## DENTAL EXAMINERS BOARD[650](cont'd)

ITEM 6. Amend subrule 12.3(3) as follows:

**12.3(3)** *Prior to December 31, 2003, the examinee must attain an average grade of 70 percent on the examination. Effective January 1, 2004, the examinee must attain a comprehensive score that meets the standard for passing established by CRDTS or WREB.*

ITEM 7. Amend subrule **12.4(1)**, paragraph “a,” as follows:

a. On the second examination attempt, a dental hygiene examinee shall be required to achieve a score of at least 70 percent. *Effective January 1, 2004, the examinee must attain a comprehensive score that meets the standard for passing established by CRDTS or WREB.*

ITEM 8. Amend subrule 13.2(4) as follows:

**13.2(4)** The appropriate fee as specified in 650—Chapter 15 of these rules shall be paid by the applicant for issuance and renewal of the faculty permit. *A faculty permit holder who fails to renew by the expiration date of the permit shall be assessed a late fee in accordance with 650—14.4(147,153,272C).*

ITEM 9. Renumber subrule **13.2(7)** as **13.2(8)** and adopt the following new subrule:

**13.2(7)** Faculty permit holders shall also be required to submit evidence of current certification in a nationally recognized course in cardiopulmonary resuscitation to renew the permit.

ITEM 10. Amend subrules 15.4(1) and 15.4(2) as follows:

**15.4(1)** The fee for issuing a duplicate license, *permit* or registration certificate or current renewal is \$10.

**15.4(2)** The fee for a certification or written verification of an Iowa license, *permit* or registration is \$10.

ITEM 11. Amend subrule 16.2(1) as follows:

**16.2(1)** A license to practice dentistry issued by this board permits the licensee to prescribe, administer, or dispense prescription drugs if the use is directly related to the practice of dentistry within the scope of the dentist-patient relationship. Registration with the Federal Drug Enforcement Administration and the Iowa board of pharmacy examiners further extends this privilege to controlled substances.

ITEM 12. Amend subrules 20.3(3), introductory paragraph, 20.11(4), and 20.12(3) as follows:

**20.3(3)** A dentist may delegate an expanded function duty to a registered dental assistant if the assistant has completed board-approved training pursuant to rule 20.16(153) in the specific expanded function that will be delegated. *The supervising dentist and registered dental assistant shall be responsible for maintaining in the office of practice documentation of board-approved training.* In addition to the other duties authorized under this rule, a dentist may delegate any of the following expanded function duties:

**20.11(4)** Failure to renew the registration by June 30 shall result in assessment of a late fee of \$20 in addition to the renewal fee. Failure to renew by July 30 shall result in assessment of a late fee of \$40. *Failure to renew by August 30 following expiration shall result in assessment of a late fee of \$60.* Failure to renew a registration prior to September 30 following expiration shall cause the registration to lapse and become invalid. A registrant whose registration has lapsed and become invalid is prohibited from practicing as a dental assistant until the registration is reinstated in accordance with 650—14.5(147,153,272C).

**20.12(3)** For dental assistants who have a special endorsement in radiography qualification, at least two hours of continuing education must be obtained in the subject area of radiography.

ITEM 13. Amend subrule 22.6(5) as follows:

**22.6(5)** Failure to renew prior to September 30 following expiration shall cause the radiography qualification to lapse and become invalid. A dental assistant whose radiography qualification is lapsed is prohibited from engaging in dental radiography until the qualification is reinstated in accordance with 650—22.7(136C,153).

ITEM 14. Amend subrule 25.2(10) as follows:

**25.2(10)** Licensees, *faculty permit holders*, and registrants shall furnish evidence of valid certification for cardiopulmonary resuscitation, which shall be credited toward the continuing education requirement for renewal of the license, *faculty permit* or registration. Such evidence shall be filed at the time of renewal of the license, *faculty permit* or registration. Credit hours awarded shall not exceed three continuing education credit hours per biennium. Valid certification means certification by an organization on an annual basis or, if that certifying organization requires certification on a less frequent basis, evidence that the licensee or registrant has been properly certified for each year covered by the renewal period.

ITEM 15. Amend subrules 27.11(2) and 27.11(5) as follows:

**27.11(2)** Retention of records. A dentist shall maintain a patient's dental record for a minimum of ~~five~~ *six* years after the date of last examination, prescription, or treatment. Records for minors shall be maintained for a minimum of either (a) one year after the patient reaches the age of majority (18), or (b) ~~five~~ *six* years, whichever is longer. Proper safeguards shall be maintained to ensure safety of records from destructive elements.

**27.11(5)** Confidentiality and transfer of records. Dentists shall preserve the confidentiality of patient records in a manner consistent with the protection of the welfare of the patient. Upon request of the patient or patient's ~~new dentist~~ *authorized representative*, the dentist shall furnish the dental records or copies or summaries of the records, including dental radiographs or copies of the radiographs, as will be beneficial for the future treatment of that patient. The dentist may charge a nominal fee for duplication of records, but may not refuse to transfer records for nonpayment of any fees.

ITEM 16. Amend subrule **28.4(2)**, paragraph “b,” as follows:

b. Be a fellow in the American Board Academy of Oral and Maxillofacial Pathology; or

ITEM 17. Amend rule **650—30.4(147,153,272C)**, numbered paragraphs “15,” “24,” “27,” and “35,” as follows:

15. Engaging in the practice of dentistry, dental hygiene, or dental assisting in Iowa after failing to renew a license or registration to practice in Iowa within 90 ~~60~~ days of expiration of the license or registration.

24. Failure to report any of the following:

Any acts or omissions which could result in the ~~suspension or revocation discipline~~ *discipline* of a license ~~licensee~~ or registration ~~registrant~~ when committed by a person licensed or registered to practice dentistry, dental hygiene, or dental assisting.

Every adverse judgment in a professional malpractice action to which the licensee or registrant was a party.

Every settlement of a claim against the licensee or registrant alleging malpractice.

## DENTAL EXAMINERS BOARD[650](cont'd)

Every conviction or violation of law or statute of this or another state as set forth in paragraph 30.4“4.”

27. In a case that has been referred by the ~~impaired~~ Iowa practitioner review committee (IPRC) to the board, violating the terms of an initial agreement with the IPRC or a recovery contract entered into with the IPRC.

35. Failure to comply with ~~universal precautions for preventing transmission of infectious diseases as issued standard precautions for preventing and controlling infectious diseases and managing personnel health and safety concerns related to infection control, as required or recommended for dentistry~~ by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

ITEM 18. Amend rule 650—31.3(153) as follows:

**650—31.3(153) Address.** The written complaint may be delivered personally, *electronically* or by mail to the executive director of the board. The current office address is 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687.

ITEM 19. Amend rule 650—31.5(153), introductory paragraph and subrule 31.5(1), introductory paragraph, as follows:

**650—31.5(153) Issuance of investigatory subpoenas.** Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue an investigatory subpoena to compel the production of evidence deemed necessary in connection with a licensee disciplinary investigation. A subpoena issued by the board in connection with a licensee disciplinary investigation may seek evidence whether or not it is privileged or confidential under law.

**31.5(1)** The executive director or designee may, upon the written request of a board investigator or on the director's own initiative, subpoena books, *correspondence*, papers, records, and other real evidence which is necessary for the board to decide whether to institute a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

ITEM 20. Amend rule 650—31.14(272C) as follows:

**650—31.14(272C) Failure to report licensee or registrant.** Upon obtaining information that a licensee or registrant failed to file a report required by rule 31.13(272C) within 30 seven days from the date the licensee or registrant acquired the information, the board may initiate a disciplinary proceeding against the licensee or registrant who failed to make the required report.

ITEM 21. Amend rule 650—51.15(17A,272C), introductory paragraph and subrule 51.15(1), as follows:

**650—51.15(17A,272C) Issuance of subpoenas in a contested case.** Pursuant to Iowa Code sections 17A.13(1) and 272C.6(3), the board has the authority to issue subpoenas to compel the attendance of witnesses at depositions or hearing and to compel the production of evidence deemed necessary in connection with a contested case. A subpoena issued by the board in a contested case may seek evidence whether or not it is privileged or confidential under law.

**51.15(1)** Subpoenas issued in a contested case The executive director or designee may, upon the written request of the licensee or the state, issue a subpoena to compel the attendance of witnesses at depositions or hearing, and may to compel the production of books, *correspondence*, papers, records, and other real evidence *deemed necessary in connection with a contested case*. A ~~command~~ subpoena to pro-

duce evidence or to permit inspection may be joined with a ~~command~~ subpoena to appear *testify* at a deposition or hearing, or may be issued separately. Subpoenas shall be issued by the executive director or designee upon written request. A request for a subpoena of mental health records must confirm that the conditions described in 650—subrule 31.5(1) have been satisfied prior to the issuance of the subpoena.

## ARC 3336B

ECONOMIC DEVELOPMENT, IOWA  
DEPARTMENT OF[261]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 25, “Housing Fund,” Iowa Administrative Code.

The proposed amendments make technical language changes and a number of substantive program changes. The substantive changes raise the maximum assistance per unit to \$50,000; raise the per project assistance to \$800,000 on rental projects; establish a \$500,000 maximum for housing rehabilitation programs; and require minimum mortgage loan standards for projects using Housing Fund resources.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on June 1, 2004. Interested persons may submit written or oral comments by contacting Rose Wazny, Community Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-3822.

A public hearing to receive comments about the proposed amendments will be held on June 1, 2004, at 2:30 p.m. at the above address in the IDED first floor northwest conference room. Individuals interested in providing comments at the hearing should contact Rose Wazny by 4 p.m. on May 31, 2004, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 15.108(1)“a.”

The following amendments are proposed.

ITEM 1. Amend rule **261—25.2(15)** by rescinding the definition of “housing needs assessments” and adopting the following new definitions:

“American Dream Down Payment Initiative (ADDI)” means a program to be used for the purpose of making down payment assistance to low-income families who are first-time homebuyers for the purchase of single-family housing that will serve as the family's principal residence.

“Displaced homemaker” means an individual who (1) is an adult; (2) has not worked full-time full-year in the labor force for a number of years but has, during such years, worked primarily without remuneration to care for the home and family; and (3) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

“First-time homebuyer” means an individual or an individual and his or her spouse who have not owned a home during the three-year period before the purchase of a home with

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

HOME or ADDI assistance, except that an individual who is a displaced homemaker or single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by a spouse; and an individual may not be excluded from consideration on the basis that the individual owns or owned, as a principal residence during the three-year period before purchase of a home with HOME assistance, a dwelling unit whose structure is (1) not permanently affixed to a permanent foundation in accordance with local or other applicable regulations or (2) not in compliance with state, local or model building codes and cannot be brought into compliance with such codes for less than the cost of constructing a permanent structure.

"Recaptured funds" means housing fund moneys which are recouped by the recipient when the housing unit assisted by the housing fund home ownership dollars does not continue to be the principal residence of the assisted homebuyer for the full affordability period required by federal statute.

"Repayment" means housing fund moneys which the recipient must repay to IDED because the funds were invested in a project or activity that is terminated before completion or were invested in a project or activity which failed to comply with federal requirements.

"Single parent" means an individual who (1) is unmarried or is legally separated from a spouse and (2) is pregnant or has one or more minor children for whom the individual has custody or joint custody.

## ITEM 2. Amend rule 261—25.4(15) as follows:

**261—25.4(15) Eligible activities and forms of assistance.**

**25.4(1)** Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and *preservation*), rental housing new construction, home ownership, home ownership assistance, owner-occupied housing rehabilitation and other housing-related activities as may be deemed appropriate by IDED. Assisted housing may be single-family or multifamily housing and may be designed for occupancy by homeowners or tenants.

## a. Assisted units shall be affordable.

(1) For rental activities, all assisted units shall rent at the lesser of the area fair market rents or *a rent that does not exceed 30 percent of 65 percent of the area median family income* and, for projects with five or more units, 20 percent of the *assisted* units shall rent at the lesser of the fair market rent or *a rent that does not exceed 30 percent of 50 percent of the area median family income*. Assisted units shall remain affordable for a specified period: 20 years for newly constructed units; *15 years for rehabilitated units receiving over \$40,000 per unit in assistance*; 10 years for rehabilitated units receiving \$15,000 to \$24,999 *\$40,000 per unit in assistance*; and 5 years for projects receiving less than \$15,000 per unit.

(2) For tenant-based rental assistance, gross rents shall not exceed the jurisdiction's applicable rent standard and shall be reasonable, based on rents charged for comparable, unassisted rental units.

(3) For home ownership assistance, the initial purchase price for newly constructed units *and or* the after rehabilitation value for rehabilitated units shall not exceed 95 percent of the median purchase price as established by HUD for the same type of single-family housing in the area. Assisted units shall remain affordable through resale *or recapture the recapture and resale* provisions for a specified period: 5

years for projects receiving ~~up to~~ *less than* \$15,000 in assistance per unit; ~~and 10 years for projects receiving \$15,000 to \$24,999~~ *\$40,000 in assistance per unit*; ~~and 15 years for projects receiving over \$40,000 in assistance per unit~~.

(4) For owner-occupied housing rehabilitation, the after rehabilitation value of ~~the rehabilitated units~~ *unit* shall not exceed 95 percent of the median purchase price for the same type of single-family housing in the area.

b. Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities, all assisted units shall be rented to households with incomes at or below 80 percent of the area's median family income; *at initial occupancy*, 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with five or more units, 20 percent of the units shall be rented to households with incomes at or below 50 percent of the area's median family income.

(2) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; ~~additionally~~, 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

(3) For home ownership assistance and owner-occupied housing rehabilitation, only households with incomes at or below 80 percent of the area median family income shall be assisted.

c. ~~All~~ *In communities with populations of 15,000 or less*, all single-family rehabilitation must be done in compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999), and all applicable state and local codes, rehabilitation standards and ordinances, and shall, at a minimum, meet HUD Section 8 Housing Quality Standards 24 CFR 882 (April 1, 1997). New units must be constructed pursuant to one of the standards specified at 24 CFR 92.251(a)(1) (April 1, 1997).

**25.4(2)** Eligible forms of *IDED* assistance *to its recipients* include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans or other forms of assistance as may be approved by IDED.

**25.4(3)** *For all single-family housing projects or activities assisting homeowners or homebuyers, the only form of housing fund assistance to the end beneficiary is a forgivable loan.*

## ITEM 3. Amend rule 261—25.5(15), introductory paragraph, as follows:

**261—25.5(15) Application procedure.** All potential housing fund applicants are encouraged, but not required, to complete and submit a HART form describing the proposed housing activity prior to the submittal of a formal *housing fund* application. If the proposal is determined to be appropriate for housing fund assistance, IDED shall inform the applicant of the appropriate application procedure by mail.

## ITEM 4. Amend subrule 25.5(5), introductory paragraph, as follows:

**25.5(5)** For applicants requesting funding ~~from~~ *for* both the housing fund and low-income housing tax credit (LIHTC) programs, the applicant may request application forms and related material from the Iowa finance authority (IFA). IFA ~~shall forward will make available~~ an application package to a potential applicant ~~and make the application package available in electronic form either by diskette or on the Internet at [www.ifahome.com](http://www.ifahome.com)~~. The applicant must submit the completed application, with required housing fund at-

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

tachments, to IFA by the deadline established in the application package.

ITEM 5. Amend subrule 25.6(7) as follows:

**25.6(7)** An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ *at least equal to 25 percent of the total IDED HOME funds requested. Sources of local PJ funds include one or more of the following: HOME, CDBG, TIF, tax abatement, general funds.*

ITEM 6. Adopt the following new subrules:

**25.6(9)** An application for a home ownership activity must indicate that recipients will require the beneficiaries of their home ownership assistance to use a principal mortgage loan product offered by one of the following: Iowa Finance Authority, USDA-Rural Development, Federal Home Loan Band, HUD (including FHA and VA), Fannie Mae, or Freddie Mac. One of these entities will be the principal, and only, mortgage lender in all individual home ownership assistance projects. Any of the named mortgage lending entity's principal mortgage loan products may be used provided they meet the following minimum requirements: loan terms will minimally include a 90 percent loan-to-value ratio and will be no less than a 15-year, fully amortized, fixed-rate mortgage.

**25.6(10)** An application for a home ownership assistance activity must stipulate that home ownership assistance is for first-time homebuyers only.

**25.6(11)** An application for a home ownership assistance activity must stipulate that housing fund assistance used to provide down payment assistance is limited to no more than 50 percent of the down payment required by the principal lender involved in the purchase.

ITEM 7. Amend rule 261—25.7(15) as follows:

**261—25.7(15) Application review criteria.** IDED shall evaluate applications and make funding decisions based on general activity criteria, need, impact, feasibility, and activity administration based upon the specific type of activity. The activity criteria shall be a part of the application. A workshop will be held at least 60 days prior to the application deadline to provide information, materials, and technical assistance to potential applicants.

**25.7(1)** As applicable, the review criteria for home ownership assistance applications shall include the following:

- a. General criteria.
  1. Activity objectives.
  2. Total number of units.
  3. Activities and cost estimates.
  4. If new construction, availability of necessary infrastructure and utilities.
  5. Form(s) of assistance (grants, loans, amounts).
  6. Type(s) of assistance (e.g., mortgage buy-down, down payment, closing costs, and rehabilitation, and combinations thereof).
  7. Median purchase price for single-family housing in the community.
  8. Initial purchase price or after rehabilitation value per assisted unit *limitation*.
  9. Mortgage lender participation documentation and their current underwriting standards.
  10. Methodology to determine maximum amount of conventional financing affordable to buyer.
  11. Selection criteria for participants *and their access to the proposed activity*.

12. Methodology to ensure that the property will be the buyer's principal residence *throughout the period of affordability*.

13. Assurance of compliance with HUD lead-based paint ~~hazard~~ *safe housing regulations as applicable*.

14. Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999) and, *as applicable, legal standards, codes, and ordinances. described in 25.4(1)“c.”*

15. Activity time line.

b. Need, impact and feasibility criteria.

1. Number and percentage of low- and moderate-income persons in the applicant community.

2. Evidence and documentation of need for the activity.

3. Percentage of need to be met through the activity.

4. Reasons mortgage applications have been denied by local lenders.

5. Housing costs, housing supply, condition of available housing, and vacancy rates.

6. If acquisition for new construction, documentation of need for new units.

7. Recent or current housing improvement activities.

8. Description of current and ongoing comprehensive community development efforts.

9. Publicity promoting the proposed activity *and identification of local partners*.

10. Number of potential participants and the method by which they were identified.

11. New businesses or industrial growth in the past five years.

12. Local involvement and financial support.

~~13. Overall vacancy rate of owner-occupied units in the community.~~

c. Administrative criteria.

1. Plan for activity administration.

2. Previous activity ~~management~~ *administrative* experience.

3. Budget for *general* administration.

4. Resale or recapture provisions, terms, and enforcement procedures.

5. Prior funding received and performance targets completed.

**25.7(2)** As applicable, the review criteria for owner-occupied housing rehabilitation applications shall include the following:

a. General criteria.

1. Activity objectives.

2. Area of benefit and reason for selection.

3. Condition of infrastructure in the activity area served.

4. Form of assistance to homeowners (~~grants, loans, amounts~~).

~~5. Homeowner contribution methodology.~~

~~6. Selection criteria for participants.~~

~~7. Method to determine that the property is the homeowner's principal residence.~~

~~8. Compliance with Iowa's Minimum Housing Rehabilitation Standards (November 1999).~~

~~9. Assurance of compliance with HUD lead-based paint hazard safe housing regulations.~~

~~10. Plans for properties infeasible to rehabilitate.~~

~~11. If relocation is included, estimate of available suitable replacement housing.~~

~~12. Documentation of local lender participation and lender's underwriting criteria.~~

~~13. Intended use of program income.~~

~~14. 10. Activity time line.~~

b. Need, impact and feasibility criteria.



## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

1. Evidence of need for the activity.
2. Percentage of need to be met through the activity.
3. Number and percentage of low- and moderate-income persons in the community.
4. Housing costs, housing supply, condition of available housing, vacancy rate of owner-occupied units in the activity area served.
5. Other recent or current housing improvement activities in the activity area served or community served.
6. Ongoing comprehensive community development efforts in the activity area served or community served.
7. New businesses or industries in the past five years in the community.
8. Local involvement and financial support.
9. Financial contribution to the activity from other sources (with underwriting criteria).
10. Overall vacancy rate of owner-occupied units in the community.
- c. Administrative criteria.
  1. Plan for activity administration.
  2. Previous activity management experience.
  3. Budget for administration.
  4. List of prior CDBG and or HOME funding.
  5. If application is for a continuation of a prior activity, list of performance targets completed.
- 25.7(3)** As applicable, the review criteria for rental housing assistance applications shall include the following:
  - a. General criteria.
    1. Activity objectives.
    2. Total number of units and number of assisted units.
    3. Activities and cost estimates.
    4. Eligibility criteria for renters of assisted units (income, age, disability, other).
    5. Rationale for activity location.
    6. Availability and condition of infrastructure; availability of utilities.
    7. Zoning compliance.
    8. Environmental issues.
    9. Potential tenant displacement including estimated Uniform Relocation Act (URA) costs.
    10. Accessibility.
    11. Assurance of compliance with HUD lead-based paint hazard safe housing regulations.
    12. Activity time line.
  - b. Need, impact and feasibility criteria.
    1. Evidence of need for the activity.
    2. Percentage of need to be met through this activity.
    3. Number and percentage of low- and moderate-income persons in the community.
    4. Housing costs, housing supply, condition of available housing, rental vacancy rate in the activity area served the community.
    5. If new construction, documentation of need for new construction.
    6. Other recent or current housing improvement activities in the activity area served or community served.
    7. Ongoing comprehensive community development efforts in the activity area served or community served.
    8. New businesses or industries in the past five years in the community.
    9. Local involvement and financial support.
    10. Opposition to the activity and plans to alleviate concerns.
    11. Financial contribution to the activity from other sources (including all underwriting criteria).

12. Reason for "gap" in the activity financing; justification for housing fund request amount.
13. Overall vacancy rate of rental units in the community.
- c. Administrative criteria.
  1. Plan for activity administration and property management.
  2. Previous administrative experience.
  3. Plan to ensure long-term affordability.
  4. Plan for annual certification of tenant eligibility and compliance with Section 8 Housing Quality Standards and any ongoing maintenance to ensure long-term lead-safe housing.
  5. Previous CDBG- and or HOME-funded housing activities and current status.
  6. Applicant's other rental housing activities and addresses.
- 25.7(4)** As applicable, the review criteria for tenant-based rental assistance applications shall include the following:
  - a. General criteria.
    1. Activity objectives.
    2. Rationale for amount of assistance per beneficiary.
    3. Selection criteria for participants.
    4. Form of assistance (grants, loans).
    5. Use of assistance (rental and security deposits, rent assistance).
    6. Length of time of assistance.
    7. Portability of rental assistance.
    8. Rent calculation.
  - b. Need, impact and feasibility criteria.
    1. Number and percentage of low- and moderate-income persons in the applicant community.
    2. Percentage of income potential beneficiaries are currently paying pay for rent.
    3. Area rental housing costs by unit based on number of bedrooms.
    4. Availability of affordable rental housing.
    5. Public housing authority waiting list.
    6. Documentation of other indicators of need for tenant-based rental assistance (TBRA).
    7. Percentage of need to be met through this activity.
    8. Alternatives to the proposed activity that were considered.
    9. Coordination of this activity with other housing assistance.
    10. Other providers of TBRA in the community.
    11. Description of efforts to obtain additional funding from other sources for TBRA.
    12. Evidence of local involvement and financial support.
    13. Opposition to activity and method to address it.
    14. Economic indicators in community (unemployment rate, increase/decrease opportunity).
    15. Activity time line.
  16. Overall vacancy rate of rental units in the community.
  - c. Administrative criteria.
    1. Plans for administering the activity.
    2. Description of previous administrative experience.
    3. Budget for administration.
    4. Plan for annual certification of tenant eligibility and compliance with Section 8 HQS.
    5. Prior CDBG and or HOME housing grants.
    6. Prior activities funded with and performance targets completed.

ITEM 8. Amend subrules 25.8(6) and 25.8(7) as follows:  
**25.8(6)** Awards shall be limited to no more than \$700,000, except for new construction of rental units which is \$800,000. Awards shall be limited to no more than \$500,000

## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

for all single-family activities assisting homeowners or homebuyers. Awards shall be limited to no more than \$800,000 for all multifamily rental activities.

**25.8(7)** The maximum per unit housing fund subsidy for all activity types single-family and multifamily activities except new construction rental units is \$24,999. Additional funds in excess of the \$24,999 per unit limitation may be used to pay direct administrative costs, lead hazard reduction costs, lead hazard reduction carrying costs, and temporary relocation as necessary or applicable. The maximum per unit housing fund subsidy for new construction rental units is \$50,000 per unit. Additional funds may be used to pay the direct administration, carrying costs and the cost of lead hazard reduction. The maximum per unit subsidy for any single-family or multifamily rehabilitation activity specifically designed to accomplish lead hazard abatement on pre-1978 structures is \$50,000 (including all costs: construction, direct administration, lead hazard abatement, lead hazard abatement carrying costs and temporary relocation).

ITEM 9. Amend paragraph **25.9(2)“d”** as follows:

d. Release of funds shall be conditioned upon ~~IDED~~ *IDED's* receipt and approval of an administrative plan for the funded activity.

**ARC 3331B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 17, “Open Enrollment,” Iowa Administrative Code.

With the exception of Item 13, the proposed amendments incorporate policies and procedures from the Department’s guidelines and decisions and implement 2003 Iowa Acts, chapter 180, section 35. Item 13 rescinds a subrule for which there is no statutory authority.

An agencywide waiver provision is provided for in 281—Chapter 4.

Any interested party may make written suggestions or comments on the proposed amendments on or before June 1, 2004. Written materials should be directed to Carol J. Greta, Legal Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146.

Persons may also present their views orally or in writing at the public hearing to be held on June 1, 2004, at 3 p.m. over the Iowa Communications Network (ICN). At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The ICN sites are as follows:

Second Floor  
Grimes State Office Building  
Des Moines  
(origination site)

West High School  
425 E. Ridgeway Ave.  
Waterloo

Western Hills Area Education Agency 12  
1520 Morningside Avenue, Rm. 209A  
Sioux City

Grant Wood Area Education Agency 10  
4401 Sixth Street SW, Revere Room  
Cedar Rapids

Loess Hills Area Education Agency 13  
24997 Highway 92  
Council Bluffs

Great River Area Education Agency 16  
3601 West Ave. Road  
Burlington

Keystone Area Education Agency 1  
2310 Chaney Road, Rm. 2  
Dubuque

Mason City High School  
1700 Fourth Southeast  
Mason City

Central High School  
1120 Main Street  
Davenport

Any person who intends to attend a public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact Carol Greta, Legal Consultant, (515)281-8661, no later than May 25, 2004.

These amendments are intended to implement 2003 Iowa Acts, chapter 180, section 35.

The following amendments are proposed.

ITEM 1. Amend rule **281—17.2(282)** by adding the following new definitions in alphabetical order:

“Attendance center” means a public school building that contains classrooms used for instructional purposes for elementary, middle, or secondary school students.

“Department” means the department of education.

“Minority student” means a student who is a member of one of the following four groups (as used by the federal Department of Education): Black (not of Hispanic origin), Hispanic, American Indian/Alaskan Native, or Asian/Pacific Islander. For purposes of these rules, a student who is biracial or multiracial may be categorized as a minority student.

“Sibling” means a child residing primarily in the same household as the child for whom an open enrollment request is filed and who is related by blood or marriage to the child for whom an open enrollment request is filed.

ITEM 2. Amend rule **281—17.2(282)**, definition of “alternative receiving district,” as follows:

“Alternative receiving district” is *means* a district to which a parent/guardian petitions for the open enrollment transfer of a pupil from a receiving district. An alternative receiving district could be the district of residence of the parents/guardians.

ITEM 3. Amend rule **281—17.2(282)**, definition of “volunteer or court-ordered desegregation,” as follows:

“~~Volunteer~~ *Voluntary* or court-ordered desegregation plan” is ~~a district~~ *means a plan* that is either under direct court order or is ~~in voluntary compliance with state board of~~

## EDUCATION DEPARTMENT[281](cont'd)

~~education guidelines voluntarily adopted to maintain certain minority-nonminority pupil ratios avoid racial isolation in the district according to a desegregation plan or order.~~

ITEM 4. Amend subrule **17.3(2)**, fifth unnumbered paragraph, as follows:

By September 30 of each school year, all districts shall notify parents of ~~open enrollment deadlines, transportation assistance, and possible loss of athletic eligibility for open enrollment pupils; the following:~~

a. *Open enrollment deadlines;*

b. *Transportation assistance;*

c. *That, within 30 days of a denial of an open enrollment request by a district board of education, the parent/guardian may file an appeal with the state board of education only if the open enrollment request was based on repeated acts of harassment or a serious health condition of the student that the district cannot adequately address; and that all other denials must be appealed to the district court in the county in which the primary business office of the district is located; and*

d. *Possible loss of athletic eligibility for open enrollment pupils.*

This notification may be published in a school newsletter, a newspaper of general circulation, or a parent handbook provided to all patrons of the district. This information shall also be provided to any parent/guardian of a pupil who ~~transfers into enrolls in~~ the district during the school year.

ITEM 5. Amend subrule 17.3(3), catchwords, as follows:

**17.3(3)** Exception to process when resident district is under ~~volunteer~~ *voluntary* or court-ordered desegregation.

ITEM 6. Amend subrule 17.6(2) as follows:

**17.6(2)** ~~Volunteer~~ *Voluntary* or court-ordered desegregation. In districts involved with voluntary or court-ordered desegregation (see 17.2(282)) where there is a requirement to maintain minority and nonminority student ratios according to a desegregation plan or order, the superintendent of the district may deny a request for open enrollment ~~transfer~~ if it is found that the enrollment or release of a pupil will adversely affect the district's desegregation plan or order. ~~Transfer~~ *Open enrollment* requests that would facilitate the desegregation plan or order shall be given priority to ~~over other transfer~~ *open enrollment* requests received by the district. A parent/guardian whose request for open enrollment ~~transfer~~ is denied by the superintendent of the district on the basis of its adverse effect on the district's desegregation plan may appeal that decision to the district board.

ITEM 7. Amend subrule 17.6(3) as follows:

**17.6(3)** Policy on insufficient classroom space. No receiving district shall be required to accept an open enrollment ~~transfer~~ request if it has insufficient classroom space to accommodate the pupil(s). Each district board shall adopt a policy that defines the term "insufficient classroom space" for that district. This policy shall establish a basis for the district to make determinations on the acceptance or denial, as a receiving district, of an open enrollment ~~transfer~~ request. This policy may include, but shall not be limited to, one or more of the following: nature of the educational program, grade level, available instructional staff, instructional method, physical space, pupil-teacher ratio, equipment and materials, facilities either being planned or under construction, facilities planned to be closed, finances available, sharing agreement in force or planned, bargaining agreement in force, law or rules governing special education class size, or

board-adopted district educational goals and objectives. This policy shall be reviewed annually by the district board.

ITEM 8. Amend subrule 17.8(1) as follows:

**17.8(1)** ~~Eligibility for transfer~~ *Expelled or suspended students.* A pupil who has been suspended or expelled by action of the administration or board of the resident district shall not be permitted to ~~transfer enroll~~ if an open enrollment request is filed until the pupil is reinstated for school attendance in the resident district. Once reinstated, the application for ~~transfer open enrollment~~ shall be considered in the same manner as any other open enrollment request. If a pupil for whom an open enrollment request has been filed is subsequently expelled by action of the resident district board, the pupil may be denied ~~transfer enrollment~~ by the receiving district board until the pupil is reinstated for school attendance by the resident district. The provisions of this subrule shall also apply to a pupil who has been suspended or expelled in a receiving district and is requesting open enrollment ~~transfer~~ to an alternative receiving district or is seeking to return to the resident district as outlined in subrule 17.8(4).

ITEM 9. Amend subrule 17.8(2), introductory paragraph, as follows:

**17.8(2)** Restrictions on participation in interscholastic athletic contests and competitions. A pupil who ~~transfers changes~~ school districts under open enrollment in any of the grades 10 through 12 shall not be eligible to participate in interscholastic *athletic* contests and competitions during the first 90 school days of ~~transfer enrollment~~. This restriction also shall apply to ~~transfers enrollments~~ resulting from an approved petition filed by a parent or guardian to ~~transfer open enroll~~ to an alternative receiving district and when the pupil returns to the district of residence using the process outlined in subrule 17.8(4). This 90-school-day restriction does not prohibit the pupil from practicing with an athletic team during the 90 school days of ineligibility. This 90-school-day restriction is not applicable to a pupil who:

ITEM 10. Amend subrule 17.8(4) as follows:

**17.8(4)** Petition for attendance in an alternative receiving district. Once the pupil of a parent/guardian has been accepted for open enrollment, attendance in an alternative receiving district under open enrollment can be initiated by filing a petition for change with the receiving district. The petition shall be filed by the parent/guardian with the receiving district ~~by on or before~~ January 1 of the year preceding the school year for which the change is requested. The timelines and notification requirements for such a request shall be the same as outlined in subrule 17.3(2). If the request is approved, the alternative district shall send notice of this action to the parent/guardian, to the *original receiving* district ~~filing the transfer~~, and to the resident district of the pupil. Petitions for ~~transfer change~~ shall be effectuated at the start of the next school year.

As an alternative procedure, the receiving and alternative receiving district boards by mutual agreement may effectuate the ~~transfer change in enrollment~~ of an open enrollment pupil at any time following receipt of a written request for ~~transfer~~ *such change* which is approved by the two boards. The parent/guardian and the resident district board shall be notified of the approval and the date for ~~transfer change in open enrollment~~ within 15 days of the mutual agreement action of the receiving and alternative receiving boards.

The record of approval action on any petition for ~~transfer change in open enrollment~~ shall be filed with the department of education by the alternative receiving district.

## EDUCATION DEPARTMENT[281](cont'd)

A pupil in good standing may return to the district of residence at any time following written notice from the parent/guardian to both the resident district and the receiving district.

ITEM 11. Amend subrule 17.8(7) as follows:

**17.8(7)** Change in residence when not participating in open enrollment. If a parent/guardian moves out of the school district of residence, and the pupil is not currently under open enrollment, the parent/guardian has the option for the pupil to remain in the original district of residence as an open enrollment pupil with no interruption in the education program or to open enroll to another school district. The parent/guardian exercising this option shall file an open enrollment request form with the new district of residence for processing and record purposes. This request shall be made on or before the Thursday before the third Friday of the following September. Timely requests under this subrule shall not be denied. If the request is for a high school pupil, the pupil shall not be subject to the initial 90-school-day ineligibility period of subrule 17.8(2). If the move is on or after the third Friday in September, the new district of residence is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

ITEM 12. Amend subrule 17.10(7) as follows:

**17.10(7)** Late ~~transfers~~ *changes of open enrollment*. The resident district and the receiving district boards by mutual agreement may effectuate the ~~transfer change in enrollment~~ of an open enrollment pupil at any time following receipt of a petition for ~~transfer such change~~ which is approved by the two boards. A ~~transfer change~~ due to good cause is a late ~~transfer change in enrollment~~. If any ~~transfer change in enrollment~~ is made on or after the third Friday in September, the resident district is not required to pay per-pupil costs or applicable weighting or special education costs to the receiving district until the first full year of the open enrollment transfer.

ITEM 13. Rescind and reserve subrule **17.10(8)**.

ITEM 14. Add new rule 281—17.14(282) as follows:

**281—17.14(282) Voluntary or court-ordered desegregation plans.**

**17.14(1)** Applicability. These rules govern only the components of a voluntary or court-ordered desegregation plan as the plan affects open enrollments. Nothing herein shall prohibit a district from implementing a lawful voluntary desegregation plan or components thereof for transfers other than open enrollment.

**17.14(2)** Eligibility to adopt and implement a plan applicable to open enrollments.

a. Adoption. The board of a school district may adopt a voluntary desegregation plan with a component that applies to open enrollments if either of the following conditions exists:

(1) The district's total student population consists of at least 20 percent minority students; or

(2) The percentage of minority students in one or more attendance centers in the district exceeds the percentage of minority students in the district as a whole by at least 20 percentage points.

b. Implementation. The open enrollment component of the plan adopted by the district board shall only be implemented by the district if other components of the desegregation plan describe the steps the district is taking internally to avoid or reduce racial isolation, and the district demonstrates the extent to which it has implemented those steps. Such

steps may include intradistrict student transfer policies, pairing of attendance centers, revision of boundaries of attendance centers, realignment of feeder systems, magnet schools, and the placement of specialized programs and services. In a district without multiple attendance centers, such steps may include pupil assignments to classrooms, classroom pairing, community and family outreach programs, student-to-student mentoring or grouping designed to promote understanding and acceptance of and positive interactions with all racial and ethnic groups, and professional development activities designed to promote understanding and acceptance of and positive interactions with all racial and ethnic groups.

The open enrollment component of the plan adopted by the district board may remain in effect for so long as the district's total minority student population exceeds 15 percent, and shall remain in effect for so long as the district demonstrates is necessary to avoid racial isolation in the district.

**17.14(3)** Open enrollment elements of a desegregation plan.

a. All applicable deadlines for the filing and determination of open enrollment requests, including the exceptions for good cause under rule 17.4(282), apply to open enrollment requests filed in a district that has adopted an open enrollment component in its voluntary desegregation plan.

b. The plan shall establish a districtwide ratio of minority-to-nonminority students to be maintained, consistent with subrule 17.14(2). All open enrollment requests, both those into and out of the district, shall be acted on according to whether the request will adversely affect or will positively affect the implementation of the plan. Under Iowa Code section 282.18, if an open enrollment request would positively affect the plan, the district shall give priority to granting the request over other requests.

c. A district with multiple attendance centers shall specify in the open enrollment component of its desegregation plan which attendance centers are affected by the open enrollment component. For each of those attendance centers, the district shall establish and specify the individual attendance center ratios of minority-to-nonminority students, consistent with subrule 17.14(2). The plan may provide for an initial determination of whether a requested open enrollment will negatively affect the specific attendance center ratio. With respect to a request to open enroll out of the attendance center, if such enrollment will negatively affect the ratio established for the attendance center, the request may be denied by the district with no further determination of the impact of the request on the districtwide ratio. For a request to open enroll either into or out of the district, if the open enrollment will not negatively affect the attendance center ratio, the request shall be denied only if there would be a negative impact on the districtwide ratio. Notwithstanding the 20 percent deviation established by subparagraph 17.14(2)"a"(2), if a district's plan sets a lower threshold and that plan has been approved by a court of competent jurisdiction, the district may implement its individual attendance center ratios in addition to its districtwide ratio.

d. The plan shall include provision for the formation and operation of a waiting list for those requests that could not be granted immediately. A parent/guardian of a child on the waiting list must be informed by the district of the details of the operation of the list and whether the parent/guardian must refile a timely request for open enrollment in order to remain on the waiting list.

e. The plan shall specify a district contact person to whom questions may be directed from parents/guardians.

EDUCATION DEPARTMENT[281](cont'd)

f. The plan shall include a provision whereby a parent/guardian has a means to request that the district determine whether a hardship exists for granting a request that may not otherwise be granted under the plan.

**17.14(4)** Exceptions. The following exceptions shall apply:

a. If an open enrollment request is filed on behalf of a student whose sibling is already participating in open enrollment to the same district to which the student desires open enrollment, the request shall be granted.

b. If an open enrollment request is filed on behalf of a student whose parent/guardian moves out of the school district of residence and who wishes to remain in the district of residence as an open enrolled student without interruption in the student's educational program under subrule 17.8(7), the request shall be granted.

c. A request for open enrollment based on repeated acts of harassment of the student shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

d. A request for open enrollment based on a serious health condition of the student that the district cannot adequately address shall not be denied on the basis that such request would have an adverse impact on the district's ratio of minority-to-nonminority students.

**17.14(5)** Review by department.

a. Initial submission of plan. A district whose board has adopted a voluntary desegregation plan for open enrollment before July 1, 2004, shall submit a copy of its plan to the department by September 1, 2004. A district that adopts such a plan on or after July 1, 2004, shall submit a copy to the department within 60 days of the adoption of the plan. All changes to voluntary desegregation plans for open enrollment shall be submitted to the department within 60 days of local board action.

b. Compliance—plans adopted before July 1, 2004. With respect to plans adopted prior to July 1, 2004, the department initially shall inform the district within 90 days whether the plan complies with this rule. The district has until July 1, 2006, to comply with this rule. The department shall work with the district toward compliance by providing technical assistance. If a district's plan is not in compliance with this rule by July 1, 2006, the district shall not use its plan to deny any timely open enrollment requests filed after July 1, 2006, until the district's plan is determined by the department to be in compliance with this rule. A district whose board adopted a plan prior to July 1, 2004, may use its plan for the 2004-2005, 2005-2006, and 2006-2007 school years.

c. Compliance—plans adopted on or after July 1, 2004. With respect to plans adopted on or after July 1, 2004, the department initially shall inform the district within 90 days of submission of the plan to the department whether the plan complies with this rule. The department shall work with the district toward compliance by providing technical assistance. Until a district's plan is in compliance with this rule, the district shall not use its plan to deny any timely open enrollment requests.

**ARC 3330B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 33, "Educating the Homeless," Iowa Administrative Code.

The proposed amendments implement the provisions of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sections 11431, et seq., which is part of the federal No Child Left Behind Act.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 1, 2004. Such written comments should be directed to the attention of Raymond Morley, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-3966.

A public hearing will be held on June 1, 2004, at 1 p.m. over the Iowa Communications Network (ICN), with the originating site located on the Second Floor, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146.

The ICN sites are as follows:

West High School 425 E. Ridgeway Ave. Waterloo	Western Hills AEA 12 1520 Morningside Ave., Rm. 209A Sioux City
Grant Wood AEA 10 4401 Sixth Street SW, Revere Rm. Cedar Rapids	Loess Hills AEA 13 24997 Highway 92 Council Bluffs
Great River AEA 16 3601 West Ave. Road Burlington	Keystone AEA 1 2310 Chaney Road, Rm. 2 Dubuque
Mason City High School 1700 Fourth Southeast Mason City	Central High School 1120 Main Street Davenport
AEA 267, State Room 9184 B 265th Street Clear Lake	Prairie Lakes AEA 8 Highway 18 & Second Street Cylinder
AEA 4, Room #103 1382 Fourth Avenue NE Sioux Center	Prairie Lakes AEA 8 330 Avenue M Ft. Dodge
AEA 267 3712 Cedar Heights Dr. Cedar Falls	AEA 267 909 S. 12th Street Marshalltown
Green Valley AEA 1405 N. Lincoln, Turner Rm. Creston	Southern Prairie AEA 15 2814 N. Court Street Ottumwa

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Education and advise of specific needs.

## EDUCATION DEPARTMENT[281](cont'd)

These amendments are intended to implement the provisions of the Stewart B. McKinney Homeless Assistance Act, as reauthorized in January 2002 as the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sections 11431, et seq. The following amendments are proposed.

ITEM 1. Amend rule 281—33.1(256) as follows:

**281—33.1(256) Purpose.** The purpose of these rules is to facilitate the enrollment of homeless children of school age *and, where appropriate, of preschool age* in the public school districts of Iowa to enable ~~them~~ *the children* to have access to a free, appropriate public education, *and to be free of being stigmatized on the basis of their status as homeless.*

ITEM 2. Amend rule 281—33.2(256) as follows:

Amend the following definitions:

“District of origin” is defined as the public school district in Iowa in which the child was last enrolled *or which the child last attended when permanently housed.*

“Homeless child or youth of school age” is defined as a child or youth ~~between the ages of 5 and 21 from the age of 3 years through 21 years~~ who lacks a fixed, regular, and adequate nighttime residence and includes *the following*: ~~a child or youth who is living on the street, in a car, tent, or abandoned building or some other form of shelter not designed as a permanent home; who is living in a community shelter facility; or who is living with nonnuclear family members or with friends, who may or may not have legal guardianship over the child or youth of school age.~~

1. *A child or youth who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; is living in a motel, hotel, trailer park, or camping grounds due to the lack of alternative adequate accommodations; is living in an emergency or transitional shelter; is abandoned in a hospital; or is awaiting foster care placement;*

2. *A child or youth who has a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings;*

3. *A child or youth who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar setting; or*

4. *A migratory child or youth who qualifies as homeless because the child or youth is living in circumstances described in paragraphs “1” through “3” above.*

Adopt the following **new** definitions in alphabetical order:

“Preschool child” is defined as a child who is three, four, or five years of age on or before September 15.

“Unaccompanied youth” is defined as a youth not in the physical custody of a parent or guardian.

ITEM 3. Amend rule 281—33.3(256) as follows:

**281—33.3(256) Responsibilities of the board of directors.** The board of directors of a public school district shall *do all of the following*:

1. **33.3(1) Locate** ~~The board shall locate and identify homeless children or youth of school age who are found within the district, whether or not they are enrolled in school.~~

2. **33.3(2) Post** ~~The board shall post, at community shelters and other locations in the district where services or assistance is provided to the homeless, information regarding the educational rights of homeless children and youth and encouraging homeless children and youth of school age to enroll in the public school at community shelters and other~~

~~locations in the district where services or assistance is provided to the homeless.~~

3. **33.3(3) Examine** ~~The board shall examine and revise, if necessary, existing school policies or rules that create barriers to the enrollment of homeless children or youth, consistent with these rules. School districts are encouraged to cooperate with homeless agencies and organizations for the homeless to explore comprehensive, equivalent alternative educational programs and support services for homeless children and youth when necessary to implement the intent of these rules.~~

**33.3(4)** ~~The board shall enact a policy prohibiting the segregation of a homeless child or youth from other students enrolled in the public school district.~~

**33.3(5)** ~~The board shall immediately enroll a homeless child or youth, pending resolution of any dispute regarding in which school the child or youth should be enrolled.~~

**33.3(6)** ~~The board shall determine school placement based on the best interest of a homeless child or youth. The board shall, to the extent feasible, keep a homeless child or youth in the school of origin, except when doing so is contrary to the wishes of the child's or youth's parent or guardian. If the child or youth becomes permanently housed during an academic year, enrollment shall continue in the school of origin for the remainder of that academic year.~~

**33.3(7)** ~~The board shall designate an appropriate staff person as the district's local educational agency liaison for homeless children and youth to carry out the following duties:~~

a. *Ensure that a homeless child or youth is identified by school personnel and through coordination activities with other entities and agencies;*

b. *Ensure that a homeless child or youth is enrolled in, and has a full and equal opportunity to succeed in, schools of the district;*

c. *Ensure that homeless families, children, and youth receive educational services for which such families, children, and youth are eligible, including Head Start and Even Start programs, tuition-free preschool programs administered by the district, and referrals to health care services, dental services, mental health services, and other appropriate services;*

d. *Ensure that the parents or guardians of homeless children and youth are informed of the educational and related opportunities available to their children and are provided with meaningful opportunities to participate in the education of their children;*

e. *Ensure that public notice of the educational rights of homeless children and youth is disseminated where such children and youth receive services under the federal McKinney-Vento Act, such as schools, family shelters, and soup kitchens;*

f. *Ensure that enrollment disputes are mediated in accordance with 42 U.S.C. Section 11432(g)(3)(E), which requires the following:*

(1) *The child or youth shall be immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute;*

(2) *The parent or guardian of the child or youth shall be provided with a written explanation of the school's decision regarding school selection or enrollment, including the rights of the parent, guardian, or youth to appeal the decision;*

(3) *The child, youth, parent, or guardian shall be referred to the local educational agency liaison designated under this*

## EDUCATION DEPARTMENT[281](cont'd)

*subrule, who shall carry out the dispute resolution process set forth in rule 33.9(256);*

*(4) In the case of an unaccompanied youth, the local educational agency liaison shall ensure that the youth is immediately enrolled in the school in which enrollment is sought, pending resolution of the dispute;*

*g. Ensure that the parent or guardian of a homeless child or youth, or the unaccompanied youth, is fully informed of all transportation services, and is assisted in accessing transportation to the school of enrollment on a comparable basis that transportation is available to other students;*

*h. Coordinate and collaborate with state coordinators and community and school personnel responsible for the provision of education and related services to homeless children and youth.*

ITEM 4. Amend rule 281—33.5(256), introductory paragraph and numbered paragraphs “3” and “4,” as follows:

**281—33.5(256) Immunization requirements.** Consistent with the provisions of Iowa Code section 139.9 139A.8 and rules of the department of public health, a public school shall not refuse to enroll or exclude a homeless child or youth for lack of immunization records if any of the following situations exist.

3. ~~Has~~ *Offers a statement that the child or youth has begun the required immunizations and is continuing to receive the necessary immunizations as rapidly as is medically feasible, or*

4. ~~Is~~ *States that the child or youth is a transfer student from any other school, and that school confirms the presence of the immunization record.*

ITEM 5. Amend rule 281—33.6(256), introductory paragraph, as follows:

**281—33.6(256) Waiver of fees and charges encouraged.** If a child or youth is determined to be homeless as defined by these rules, a school district is encouraged, subject to state law, to waive any fees or charges for materials or supplies that would present a barrier to the enrollment or transfer of the child or youth, *such as fees or charges for textbooks, supplies, or activities.*

ITEM 6. Amend subrule 33.8(1) as follows:

**33.8(1)** A child or youth, *a preschool child if the school offers tuition-free preschool, or a preschool child with a disability* who meets the definition of homeless in these rules is entitled to receive a free, appropriate public education and necessary support services in either of the following:

a. The district in which the homeless child or youth is actually residing, or

b. The district of origin.

The deciding factor as to which district has the duty to enroll the homeless child or youth shall be the best interests of the child or youth. *In determining the best interests of the child or youth, the district(s) shall, to the extent feasible, keep a homeless child or youth in the district of origin, except when doing so is contrary to the wishes of the parent or guardian of the child or youth. In the case of an unaccompanied youth, the local educational agency liaison shall assist in the placement or enrollment decision, taking into consideration the views of the unaccompanied youth. If the child or youth is placed or enrolled in a school other than within the district of origin or other than a school requested by the parent or guardian or unaccompanied youth, the district shall provide a written explanation, including notice of the right to appeal under rule 33.9(256), to the parent or guardian or unaccompanied youth.*

ITEM 7. Add **new** subrule 33.9(6) as follows:

**33.9(6)** While dispute resolution is pending, the child or youth shall be enrolled immediately in the school within the district of choice of the parent or guardian of the child or youth or the school within the district of choice of the unaccompanied youth.

ITEM 8. Amend subrule 33.10(1) as follows:

**33.10(1)** Intent. A child or youth, *a preschool child if the school offers tuition-free preschool, or a preschool child with a disability* who meets the definition of homeless in these rules shall not be denied access to a free, appropriate public education solely on the basis of transportation. The necessity for and feasibility of transportation shall be considered, however, in deciding which of two districts would be in the best interests of the homeless child or youth. The dispute resolution procedures in rule 33.9(256) are applicable to disputes arising over transportation issues.

ITEM 9. Amend subrule **33.10(2)**, paragraph “b,” as follows:

b. ~~If the appropriate district is determined to be the district of origin of the homeless child or youth, and the district of origin is contiguous to the district in which the child or youth is actually living, a district other than the district in which the child or youth is actually living, the district in which the child or youth is actually living (sending district) and the district of origin shall agree upon a method to apportion the responsibility and costs for providing the child with transportation to and from the receiving district. If these districts are unable to agree upon such method, the responsibility and costs for transportation shall be shared equally. is responsible for transportation. The sending district shall be responsible for providing transportation or paying the pro rata cost of the transportation to the parent or guardian for transporting the child or youth to and from a point on a regular school bus route of the contiguous receiving district. However, a decision to reimburse the parent or guardian rather than provide transportation shall not be made by the sending district if the parent or guardian is unable to regularly transport the child or youth to the designated stop.~~

The district of origin now designated for the pupil's enrollment shall have the primary responsibility to transport the child from the point on a regular bus route within the district to the appropriate designated attendance center.

ITEM 10. Rescind subrule **33.10(2)**, paragraph “c.”

ITEM 11. Amend rule 281—33.11(256) as follows:

**281—33.11(256) School services.**

**33.11(1)** The school district designated for the pupil's ~~homeless child's or youth's~~ enrollment shall make available to the homeless child or youth all services and assistance, including but not limited to ~~the following services~~ *compensatory education, special education, English as a second language, vocational courses or programs, programs for gifted and talented pupils, health services, and food and nutrition programs*, on the same basis as those services and assistance are provided to resident pupils:

- a. *Compensatory education;*
- b. *Special education;*
- c. *English as a second language;*
- d. *Vocational and technical education courses or programs;*
- e. *Programs for gifted and talented pupils;*
- f. *Health services;*
- g. *Preschool (including Head Start and Even Start);*
- h. *Before and after school child care;*

## EDUCATION DEPARTMENT[281](cont'd)

i. *Food and nutrition programs.*

**33.11(2)** *A district must include homeless students in its academic assessment and accountability system under the federal No Child Left Behind Act, P.L. 107-110. Assessments should be included in the economically disadvantaged category for reporting purposes. Schools are not required to disaggregate information regarding homeless students as a separate category, but may be asked to do so in accordance with the duties of the United States Secretary of Education and the Office of the State Coordinator.*

ITEM 12. Amend **281—Chapter 33**, implementation clause, as follows:

These rules are intended to implement the provisions of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. § 11431 et seq. as reauthorized in January 2002 as the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, et seq.).

**ARC 3342B**

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

**Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby gives Notice of Intended Action to amend Chapter 1, “Administration,” Iowa Administrative Code.

This rule is intended to provide guidance to licensed professional engineers, other design professionals, unlicensed persons engaged in various aspects of building construction, building officials, owners, and others on when the services of a licensed professional engineer are required or may not be required in connection with new building construction and alterations to existing structures.

Waiver of these rules may be sought pursuant to 193—Chapter 5, “Waivers and Variances from Rules.”

Any interested person may make written or oral suggestions or comments on the proposed amendment on or before June 1, 2004. Comments should be directed to Glean Coates, Executive Officer, Iowa Engineering and Land Surveying Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021, or by telephoning (515)281-7360.

This amendment is intended to implement Iowa Code sections 542B.2(8) and 542B.27(1).

The following amendment is proposed.

Amend 193C—Chapter 1 by adding the following **new** rule:

**193C—1.5(542B) Licensed professional engineers and building construction.**

**1.5(1) Purpose.** This rule is intended to provide guidance to licensed professional engineers, other design professionals, unlicensed persons engaged in various aspects of building construction, building officials, owners, and others on when the services of a licensed professional engineer are required or may not be required in connection with new building construction and alterations to existing structures.

**1.5(2) General guidelines.** Given the wide range of buildings covered by this rule and the unique issues which may arise with respect to specific buildings, it is not possible to establish definitive criteria which will universally resolve when building construction or alterations will or will not implicate the practice of professional engineering, as defined in Iowa Code sections 542B.2(8) and 542B.27(1). For example, while the construction of a single-family residence would not generally require the services of a licensed professional engineer, unique or unconventional features of a particular site or design may necessitate complex structural calculations or other services which fall within the definition of professional engineering. As a result, this rule should be interpreted as providing only general guidelines on when a licensed professional engineer is required or may not be required.

**1.5(3) Applicability.** The board will consider the guidelines provided in this rule when enforcing Iowa Code chapter 542B, including when determining whether an unlicensed person has engaged in the practice of professional engineering. This rule is not intended to constrain building officials or other public officials in their enforcement of other laws, rules, regulations or ordinances. A building code official, for example, may require that certain documents be prepared by a licensed professional engineer or that certain construction inspections be performed by a licensed professional engineer whether or not the guidelines in this rule would so require. This rule only addresses the practice of professional engineering and does not address the practice of architecture. Similar guidelines with respect to the practice of architecture may be found at 193B—Chapter 5.

**1.5(4) Definitions.** The definitions set forth in 193B—5.1(544A) shall apply to this rule.

**1.5(5) Guidelines for new construction.** The following matrix describes by building type and use when the services of a licensed professional engineer are required or may not be required in connection with new building construction:

<b>BUILDINGS NEW CONSTRUCTION</b>			
<b>Building Use Type</b>	<b>Description</b>	<b>Engineer Required</b>	<b>Engineer May Not Be Required</b>
Agricultural Use	Facilities for private use only, and individually owned and operated facilities including grain elevators and feed mills		X
	Corporate-owned or publicly owned facilities including grain elevators and feed mills	X	



## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

<b>BUILDINGS NEW CONSTRUCTION</b>			
<b>Building Use Type</b>	<b>Description</b>	<b>Engineer Required</b>	<b>Engineer May Not Be Required</b>
Churches and accessory buildings whether attached or separate	One or two stories in height, up to a maximum of 2,000 square feet in gross floor area		X
	Any number of stories in height, greater than 2,000 square feet in gross floor area	X	
	More than two stories in height	X	
Commercial Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
	One story in height, greater than 10,000 square feet in gross floor area	X	
	Two stories in height, up to a maximum of 6,000 square feet in gross floor area		X
	Two stories in height, greater than 6,000 square feet in gross floor area	X	
	More than two stories in height	X	
Detached Residential Use	One, two or three stories in height, containing 12 or fewer family dwelling units		X
	More than 12 family dwelling units	X	
	More than three stories in height	X	
	Outbuildings in connection with detached residential buildings		X
Educational Use		X	
Governmental Use	When the occupancy is of another building use type listed herein, those provisions shall apply	X	
Industrial Use		X	
Institutional Use		X	
Light Industrial Use			X
Places of assembly		X	
Warehouse Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
	One story in height, greater than 10,000 square feet in gross floor area	X	
	More than one story in height	X	
Factory-Built Buildings	One or two stories in height, up to a maximum of 20,000 square feet in gross floor area		X
	One or two stories in height, greater than 20,000 square feet in gross floor area	X	
	More than two stories in height	X	
	More than 20,000 square feet in gross floor area	X	

**1.5(6)** Guidelines for alterations to existing buildings. The following matrix describes by alteration type when the services of a licensed professional engineer are required or may not be required in connection with alterations to existing buildings:

<b>ALTERATIONS TO EXISTING BUILDINGS</b>			
<b>Alteration Type</b>	<b>Description</b>	<b>Engineer Required</b>	<b>Engineer May Not Be Required</b>
Structural alterations to exempt buildings under Iowa Code section 544A.18	Modifications which change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns		X
Structural alterations to buildings that are not exempt	Modifications which change the structural members, means of egress, handicap accessible path, fire resistivity or other life safety concerns	X	
Nonstructural alteration	Which does not modify means of egress, handicap accessible path, fire resistivity or other life safety concerns		X
	Which maintains the previous type of use		X

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

<b>ALTERATIONS TO EXISTING BUILDINGS</b>				
<b>Alteration Type</b>	<b>Description</b>		<b>Engineer Required</b>	<b>Engineer May Not Be Required</b>
Nonstructural alteration which changes the use of the building from any other use to:	A place of assembly of people or public gathering		X	
	Governmental use		X	
	Educational use		X	
	Hazardous use		X	
	A place of residence exempted	and is one, two or three stories in height and contains not more than 12 family dwelling units		X
	A place of residence not exempted otherwise	and is more than three stories in height	X	
		and containing more than 12 family dwelling units	X	
Nonstructural alterations which change the use of the building from industrial or warehouse to:	Commercial or office use	and is one story in height and not greater than a maximum of 10,000 square feet in gross floor area		X
		and is one story in height and greater than 10,000 square feet in gross floor area	X	
		and is two stories in height and not greater than a maximum of 6,000 square feet in gross floor area		X
		and is two stories in height and greater than 6,000 square feet in gross floor area	X	
		and is more than two stories in height	X	
		and is greater than 10,000 square feet of gross floor area	X	
Nonstructural alterations to:	Agricultural Use	Including grain elevators and feed mills		X
	Churches and Accessory Building Uses	One or two stories in height, up to a maximum of 2,000 square feet in gross floor area		X
		Any number of stories in height, greater than 2,000 square feet in gross floor area	X	
		More than two stories in height	X	
	Commercial Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
		One story in height, greater than 10,000 square feet in gross floor area	X	
		Two stories in height, up to a maximum of 6,000 square feet in gross floor area		X
		Two stories in height, greater than 6,000 square feet in gross floor area	X	
		More than two stories in height	X	
	Detached Residential Buildings	One, two or three stories in height, containing 12 or fewer family dwelling units		X
		More than 12 family dwelling units	X	
		More than three stories in height	X	
		Outbuildings in connection with detached residential buildings		X
	Educational Use		X	

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

ALTERATIONS TO EXISTING BUILDINGS				
Alteration Type	Description		Engineer Required	Engineer May Not Be Required
Nonstructural alterations to: (cont'd)	Governmental Use	When the occupancy is of another building use type listed herein, those provisions shall apply	X	
	Industrial Use		X	
	Institutional Use		X	
	Light Industrial Use			X
	Places of Assembly		X	
	Warehouse Use	One story in height, up to a maximum of 10,000 square feet in gross floor area		X
		One story in height, greater than 10,000 square feet in gross floor area	X	
		More than one story in height	X	
	Factory-Built Buildings	One or two stories in height, up to a maximum of 20,000 square feet of gross floor area		X
		One or two stories in height, greater than 20,000 square feet in gross floor area	X	
		More than two stories in height	X	
		More than 20,000 square feet in gross floor area	X	

**1.5(7)** Architectural exemptions do not apply. The statutory exemptions in Iowa Code section 544A.18 do not apply to the practice of engineering. The construction of a building that falls within an exemption in Iowa Code section 544A.18 may require the services of an engineer if, for example: (a) there are structural elements which do not fall within building code definitions of conventional light frame construction, (b) the use of certain structural materials, members or components requires special inspections by engineers, or (c) HVAC, plumbing or electrical systems exceed certain building code standards. However, the matrix guidelines in this rule are generally compatible with the exemptions in Iowa Code section 544A.18 because the construction of buildings that fall outside the exemptions in Iowa Code section 544A.18 generally does implicate the practice of professional engineering in such disciplines as structural, electrical or mechanical engineering. The construction of buildings that fall within one of the exemptions described in Iowa Code section 544A.18 would not typically require the services of a licensed professional engineer, but may require those services in specific circumstances.

**ARC 3359B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.304 and 455D.6(6), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 118, "Discarded Appliance Demanufacturing," Iowa Administrative Code.

The proposed amendments will make Chapter 118 consistent with federal regulations and will clarify the intent of the chapter. The proposed changes include:

- Requiring as part of the permit application documentation which shows that the facility meets local zoning requirements.
- Striking the requirement that all generators of sodium chromate obtain an EPA identification number.
- Correcting references to the Code of Federal Regulations.
- Removing the provision that allows for the storage of mercury for one year.
- Adding a provision stating that, if a DNR training course is not presently scheduled to occur when the appliance demanufacturer applies for the permit, a permit may be issued with the condition that at least one owner or full-time

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

employee complete the next available DNR-approved training course.

Any interested person may make written suggestions or comments on these proposed amendments prior to the close of business on June 2, 2004. Such written materials should be directed to Theresa Stiner, Energy and Waste Management Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons wishing to convey their views orally should contact Theresa Stiner at (515)281-8646 or at the Wallace State Office Building.

The Energy and Waste Management Bureau encourages stakeholders to utilize the following guidelines when submitting comments. These guidelines aid the Bureau in accurately understanding and creating a record of input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual, or for a business or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, there will be a public hearing on June 2, 2004, at 1 p.m. in the Fourth Floor Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 455B, division IV, part 1, and section 455D.6(6).

The following amendments are proposed.

ITEM 1. Amend rule **567—118.3(455B,455D)**, definition of “appliances,” as follows:

“Appliances” means devices such as refrigerators, freezers, kitchen ranges, air-conditioning units, dehumidifiers, gas water heaters, furnaces, thermostats, clothes washers, clothes dryers, dishwashers, microwave ovens and commercial coolers with components containing mercury, refrigerants, or PCB-containing capacitors that are discarded from all sources.

ITEM 2. Amend subrule 118.5(3) as follows:

**118.5(3)** An applicant must establish a unique marking system, to be submitted with the permit application for DNR approval, signifying that all refrigerants, PCBs, and mercury-containing components have been removed. The unique marking system must be a minimum of nine inches square by nine inches and must be applied to the appliances after demanufacturing.

ITEM 3. Amend rule 567—118.6(455B,455D), introductory paragraph, as follows:

**567—118.6(455B,455D) Training.** Beginning January 1, 2003, at least one owner or full-time employee of an appliance demanufacturing facility must have completed a DNR-approved training course covering, at a minimum, the following topics. *A If such a course is not presently scheduled, the appliance demanufacturing facility may be issued a permit with the condition that at least one owner or full-time*

*employee complete the next DNR-approved training course. Unless otherwise authorized pursuant to a permit condition, a trained person must be on site at all times when discarded appliances are being demanufactured.*

ITEM 4. Amend subrule **118.7(1)** by adding new paragraph “o” as follows:

o. Documentation that a permanent facility meets local zoning requirements.

ITEM 5. Amend subrule **118.9(6)**, paragraph “g,” as follows:

g. Persons generating sodium chromate waste must obtain an EPA identification number and maintain records to determine if they are a *conditionally exempt small-quantity generator*, *small-quantity generator*, or *large-quantity hazardous waste generators based on a yearly accumulation generator of hazardous waste*.

ITEM 6. Amend subrule 118.10(2) as follows:

**118.10(2)** All mercury-containing component storage containers must be labeled with the proper EPA-approved mercury label stating “mercury” or “hazardous waste” (49 CFR Part 262.34(a)(2) and (3)) in both English and the predominant language of any non-English-reading workers. In addition to the label, the date when the first mercury-containing component was placed in the container must be affixed on the container (40 CFR Part 162). *Storage of mercury is limited to one year after which it must be transported to an EPA-approved recycler.*

ITEM 7. Amend rule 567—118.10(455B,455D) by adding new subrule 118.10(6) as follows:

**118.10(6)** All mercury-containing components must be managed in accordance with all state and federal regulations.

ITEM 8. Amend subrule **118.13(1)**, paragraph “a,” as follows:

a. The name of the facility or facilities to which demanufactured appliances were shipped, the date of each shipment, the weight or number of appliances in each shipment and the name and address of the transporter.

**ARC 3358B**

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455D.6(7) and 455B.304(1), the Environmental Protection Commission hereby gives Notice of Intended Action to adopt new Chapter 122, “Electronics Recycling,” Iowa Administrative Code.

These rules are intended to satisfy Iowa Code section 455D.6(7), in which the Legislature directed the Department to propose rules for the recycling of electronics and the disassembly and removal of toxic parts from electronics.

The proposed rules were written by the Department with the input of a 19-member advisory committee. The advisory committee consisted of electronics recyclers, the Iowa Re-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

cycling Association (IRA), the Iowa Society of Solid Waste Operations (ISOSWO), the Association of Business and Industry (ABI), local government officials, and a representative from U.S. EPA Region 7.

Any interested person may make written suggestions or comments pertaining to these proposed rules on or before June 1, 2004. Such written materials should be directed to Jeff Myrom, Energy and Waste Management Bureau, Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons wishing to convey their views orally should contact Jeff Myrom at (515)281-3302.

The Energy and Waste Management Bureau encourages stakeholders to utilize the following guidelines when submitting comments. These guidelines aid the Bureau in accurately understanding and creating a record of input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or for a business or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, there will be a public hearing on June 1, 2004, at 1 p.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code sections 455D.6(7) and 455B.304(1).

The following rules are proposed.

Adopt the following **new** 567—Chapter 122:

## CHAPTER 122 ELECTRONICS RECYCLING

**567—122.1(455B,455D) Purpose.** These rules are intended to satisfy the requirements of Iowa Code sections 455D.6(7) and 455B.304(1). The purpose of this chapter is to implement rules for the recycling of discarded electronics and the disassembly and removal of toxic parts from discarded electronics in a manner that is safe for human health and the environment.

**567—122.2(455B,455D) Applicability and compliance.**

**122.2(1)** This chapter applies to facilities that perform electronics recycling functions, including but not limited to the collection, refurbishing, demanufacturing, and processing of discarded electronics.

**122.2(2)** This chapter does not apply to facilities solely engaged in electronics reuse activities. This chapter does not apply to businesses solely engaged in electronics service and repair. This chapter does not apply to batteries, circuit boards, CRTs, mercury-containing components, or PCB capacitors removed during the maintenance or service of equipment containing such items.

**122.2(3)** These rules do not pertain to appliance demanufacturing. For rules pertaining to appliance demanufacturing, see 567—Chapter 118.

**122.2(4)** The issuance of a permit by the department in no way relieves the applicant of the responsibility of complying with all other local, state, or federal statutes, ordinances, and rules or other requirements applicable to the construction and operation of an electronics recycling facility.

**122.2(5)** Electronics recycling facilities and electronics collection facilities in operation before [insert the effective date of these rules] shall apply for a permit within 90 days of [insert the effective date of these rules]. Electronics recycling facilities and electronics collection facilities in operation before [insert the effective date of these rules] shall comply with these rules or close within one year of [insert the effective date of these rules].

**567—122.3(455B,455D) Definitions.** In addition to the definitions set out in Iowa Code section 455B.301, which shall be considered to be incorporated by reference in these rules, the following definitions shall apply:

“Battery” means a device consisting of one or more electrically connected electrochemical cells, which is designed to receive, store, and deliver electric energy.

“Capacitor” means a device for accumulating and holding a charge of electricity that consists of conducting surfaces separated by a dielectric fluid. For the purposes of this chapter, “capacitor” does not include dry-cell capacitors.

“Cathode ray tube” and its abbreviation “CRT” mean a vacuum tube composed primarily of leaded glass and used to convert an electrical signal into a visual image.

“CFR” means Code of Federal Regulations.

“Circuit board” means a board in a computer or electronic good that holds integrated circuits and other electronic components.

“CRT device” means any device that contains a CRT. Examples of a CRT device include, but are not limited to, computer monitors, televisions, some cash registers, and oscilloscopes. A CRT device is a subcategory of discarded electronics.

“CRT glass” means any glass generated from CRTs.

“Discarded” means no longer to be used for the original intended purpose and is the letting go or throwing away of materials that have become useless or superfluous though often not intrinsically valueless. Electronics that are returned to the original owner are not “discarded.”

“Discarded electronics” means a discarded product or apparatus that has its primary functions provided by electronic circuitry and components and contains a cathode ray tube.

“DOT-approved container” means those containers approved by the U.S. Department of Transportation for shipping hazardous materials in the United States.

“Electronics collection” means any activity by an electronics recycling facility or electronics collection facility involving the collection of discarded electronics.

“Electronics collection facility” means a site where ongoing electronics collection is the only electronics recycling activity performed.

“Electronics demanufacturing” means any activity involving the disassembly of discarded electronics.

“Electronics fluff” means the residual waste from the shredding of discarded electronics.

“Electronics processing” means any activity that processes discarded electronics into raw materials.

“Electronics recycling” means any process by which discarded electronics or electronic materials that would otherwise become waste are collected, processed, and returned to

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

use in the form of raw materials or products. Electronics recycling includes, but is not limited to, electronics demanufacturing, electronics processing, and electronics refurbishing.

“Electronics recycling facility” means a site where electronics recycling takes place.

“Electronics refurbishing” means any activity that repairs and rebuilds discarded electronics, so that they may be used for their original intended purpose.

“Electronics reuse” means any activity involving the donation or sale of discarded electronics for their original intended purpose provided that the discarded electronics have not been refurbished at the electronics reuse facility.

“Hazardous condition” means any situation involving the actual, imminent or probable release of a hazardous substance onto the land, into a water of the state, or into the atmosphere which, because of the quantity, strength or toxicity of the hazardous substance, its mobility in the environment and its persistence in the environment, creates an immediate or potential danger to the public health or safety, or to the environment.

“Mercury-containing components” means devices, other than batteries, containing a regulated amount of mercury.

“PCB” or “PCBs” means polychlorinated biphenyl, which is a chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees, or any combination of such substances.

“Short-term electronics collection” means any temporary activity involving the collection of discarded electronics, which is not on the premises of an electronics recycling facility or electronics collection facility, and in which all discarded electronics that have been collected are transported to a properly permitted electronics recycler.

**567—122.4(455B,455D) Short-term electronics collection notification.** An entity conducting a short-term electronics collection event is encouraged to notify the local solid waste agency, the department field office with jurisdiction over the collection area, and the department at least 30 days prior to the event.

**567—122.5(455B,455D) Operational requirements for short-term electronics collection.** All short-term electronics collection shall be done in a manner that complies with the following requirements. So long as this rule is complied with, the only rules within this chapter that shall apply to the activity are rules 122.1(455B,455D) to 122.4(455B,455D) and this rule.

**122.5(1)** Event organizers shall work with and transport all discarded electronics to a properly permitted electronics recycler.

**122.5(2)** CRT glass and CRTs that show evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents into the environment shall be collected in enclosed and separate containers from other discarded electronics. Such containers shall be protected from precipitation.

**122.5(3)** Litter shall be contained.

**567—122.6(455B,455D) Electronics recycling permits.**

**122.6(1)** Permit required. An electronics recycling facility or electronics collection facility shall not be constructed or operated without a permit from the department.

**122.6(2)** Electronics recycling permit exemption. If an electronics recycling facility or electronics collection facility is located at a permitted recycling or composting facility or sanitary disposal project, it shall not require its own permit;

instead, the electronics recycling activities shall be amended into the host facility’s permit.

**122.6(3)** Construction and operation. Electronics recycling facilities and electronics collection facilities shall be constructed and operated according to the plans and specifications approved by the department and the conditions of the permit. The approved plans and specifications shall constitute a condition of the permit.

**122.6(4)** Transfer of title and permit. If title to an electronics recycling facility or electronics collection facility is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

a. The title transferee has applied in writing to the department to request a transfer of the permit within 30 days of the transfer of title.

b. The permitted facility is in compliance with Iowa Code chapters 455B and 455D, these rules and the conditions of the permit.

**122.6(5)** Permit conditions. Any permit may be issued subject to conditions specified in writing by the department that are necessary to ensure that the facility is constructed and operated in compliance with Iowa Code chapters 455B and 455D and these rules.

**122.6(6)** Effect of revocation. If a permit held by any public or private agency is revoked by the director, then no new permit shall be issued to that agency for that electronics recycling facility for a period of one year from the date of revocation. Such revocation shall not prohibit the issuance of a permit for the facility to another public or private agency.

**122.6(7)** Inspection prior to commencing new operation. The department shall be notified when the construction of a new facility has been completed. No discarded electronics shall be accepted by the facility until it has been inspected and approved by the department or until 30 days have passed from the date of permit issuance and no inspection has been performed by the department.

**122.6(8)** Duration and renewal of permits. A permit shall be issued and may be renewed for a period of three years, unless otherwise authorized by the department.

**122.6(9)** Request and approval of permit renewal. A request for permit renewal shall be in writing and shall be filed at least 90 days before the expiration of the current permit by submitting Form 50 (542-1542) to the department. The department may request that additional information be submitted for review to make a permit renewal decision. The department shall renew the permit if, after a review and inspection of the facility and its compliance history, the department finds that the facility is in compliance with Iowa Code chapters 455B and 455D, these rules and the conditions of the permit, and is making a good-faith effort to maintain compliance. If the facility is found not to be in compliance with Iowa Code chapters 455B and 455D, these rules, and the conditions of the permit or if a good-faith effort to maintain compliance is not being made, the facility shall be brought into compliance or placed on a compliance schedule approved by the department before the permit is renewed.

**122.6(10)** Request for permit modification. A request for permit modification shall be submitted in writing to the department with supporting documentation and materials. The department may request that additional information be submitted for review to make a permit modification decision.

**567—122.7(455B,455D) Permit application requirements for electronics collection facilities.** An applicant for an electronics collection facility permit must submit the following information to the department:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**122.7(1)** The name, address, and telephone number of:

- a. The owner of the site where the collection project will be located.
- b. The permit applicant.
- c. The site where the collection project will be located.
- d. The individual responsible for the operation of the collection project.

**122.7(2)** Proof of the applicant's ownership of the site or legal entitlement to use the site for electronics collection.

**122.7(3)** Documentation that the facility meets local zoning requirements.

**122.7(4)** Days and hours of operation of the site.

**122.7(5)** The service area of the facility.

**122.7(6)** Area and estimated population to be served by the electronics collection facility.

**122.7(7)** A description of how the site and discarded electronics will be secured.

**122.7(8)** Site plans, including floor plans of buildings where discarded electronics will be collected and stored. Semitrailers may also be utilized.

**122.7(9)** The name(s) of the electronics recycling facility or facilities serving the applicant.

**567—122.8(455B,455D) Operational requirements for electronics collection facilities.** All electronics collection shall be done in a manner that complies with the following requirements. So long as this rule is complied with, the only rules within this chapter that shall apply to the permitted activity are rules 122.1(455B,455D) to 122.3(455B,455D), 122.6(455B,455D), 122.7(455B,455D), 122.9(455B,455D), 122.10(455B,455D), and this rule.

**122.8(1)** Collection activities for discarded electronics shall occur in an area and through a process that minimizes the risk of hazardous conditions.

**122.8(2)** Any hazardous condition shall immediately be contained and remedied with proper equipment and procedures.

**122.8(3)** Discarded electronics shall be collected and contained in a manner that is structurally adequate to prevent breakage and spillage under normal operating conditions, and that is compatible with the contents.

**122.8(4)** CRT glass and CRTs that show evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents into the environment shall be collected in enclosed and separate containers from other discarded electronics. Such containers shall be protected from precipitation.

**122.8(5)** An electronics recycling facility may store discarded electronics and materials derived from discarded electronics outdoors if the following conditions are met:

- a. The facility has a stormwater permit, if applicable.
- b. The material is not harboring or attracting vectors.
- c. Litter is contained within the storage area or unit.
- d. The discarded electronics and materials derived from discarded electronics are not broken CRTs or CRT glass.

**122.8(6)** Discarded electronics and materials derived from discarded electronics shall not be speculatively accumulated. Speculative accumulation occurs when a facility cannot demonstrate that the amount of discarded electronics and materials derived from discarded electronics leaving the facility within a 12-month time period is greater than 75 percent, by weight or volume, of the discarded electronics and materials derived from discarded electronics received by the facility within a 12-month time period.

**122.8(7)** Containers or packages shall be labeled and transported in compliance with state and federal Department of Transportation (DOT) regulations.

**567—122.9(455B,455D) Reporting requirements for electronics collection facilities.** An electronics collection facility shall maintain copies of all invoices received from electronics recycling facilities to which discarded electronics have been transported for each calendar year and report this information to the department within 30 days of the end of that calendar year.

**567—122.10(455B,455D) Record-keeping requirements for electronics collection facilities.** All electronics collection facilities shall maintain the following records, on a calendar-year basis, for three years:

**122.10(1)** The name and address of the facility receiving a shipment that left the electronics collection facility, and contact information for that facility.

**122.10(2)** The type of service the receiving facility will provide to the electronics collection facility.

**122.10(3)** A description of the shipment contents.

**122.10(4)** All bills of lading.

**122.10(5)** All hazardous waste manifests.

**567—122.11(455B,455D) Electronics recycling facility permit application requirements.**

**122.11(1)** An electronics recycling facility permit applicant shall submit the following permit application information to the department:

- a. The name, address, and telephone number of:
  - (1) The owner of the site where the project will be located.
  - (2) The permit applicant.
  - (3) The individual responsible for the operation of the project.
  - (4) The professional engineer (P.E.) licensed in the state of Iowa and retained for the design of the facility, if any.
  - (5) The agency to be served by the project, if any.
  - (6) The responsible official of the agency to be served, if any.
- b. A legal description of the site, and any collection sites if separate from the main facility.
- c. A map or aerial photograph locating the boundaries of the site and identifying:
  - (1) North and other principal compass points.
  - (2) Zoning and land use within 250 feet of the property boundary.
  - (3) Homes and buildings within 250 feet of the property boundary.
  - (4) Section lines or other legal boundaries.
  - (5) The 100-year flood plain pursuant to rule 122.12(455B,455D).
- d. Proof of the applicant's ownership of the site or legal entitlement to use the site for electronics recycling.
- e. Documentation that the facility meets local zoning requirements.
- f. Days and hours of operation of the site.
- g. The service area of the facility.
- h. The type, source, and number or weight of discarded electronics expected to be handled each year.
- i. A description of the electronics recycling process to be used, such as collection, demanufacturing, processing, reuse, refurbishing, or a combination thereof.
- j. Site plans detailing how the site will comply with rule 122.13(455B,455D), including floor plans of buildings where discarded electronics will be handled and the location within each building for specific recycling activities.
- k. A plan of operations detailing how the site will comply with rules 122.14(455B,455D) to 122.22(455B,455D).

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l. An emergency response and remedial action plan (ERRAP) pursuant to rule 122.23(455B,455D).

m. A reporting plan detailing how the site will comply with rule 122.25(455B,455D).

n. A closure plan detailing how the site will comply with rule 122.27(455B,455D).

**122.11(2)** If the department finds the permit application information to be incomplete, it shall notify the applicant of that fact and of the specific deficiencies. If the deficiencies are not corrected within 30 days, the department shall return the application materials to the applicant. The applicant may reapply without prejudice.

**567—122.12(455B,455D) Site requirements for electronics recycling facilities.** An electronics recycling facility shall not be located within a 100-year flood plain.

**567—122.13(455B,455D) Design requirements for electronics recycling facilities.** An electronics recycling facility shall be designed and constructed to meet the following requirements:

**122.13(1)** Electronics recycling facilities shall be enclosed by walls, a roof, and a floor satisfactory to:

- a. Prevent litter from exiting the building.
- b. Keep precipitation out of the building.

**122.13(2)** An electronics recycling facility shall maintain a separation between stormwater and liquids generated inside the building.

**122.13(3)** Discarded electronics shall be demanufactured and processed in an area where hazardous materials can be contained.

**122.13(4)** A sign shall be posted at the primary entrance to the facility. The sign shall be a minimum of  $8\frac{1}{2} \times 11$  inches and visible from the outside of the building at approximately eye level. The lettering shall be a minimum of 1-inch high and state the following information:

- a. Name and permit number of facility.
- b. Telephone number of emergency contact person(s).

**122.13(5)** An electronics recycling facility may store discarded electronics and materials derived from discarded electronics outdoors if the following conditions are met:

- a. The facility has a stormwater permit, if applicable.
- b. The material is not harboring or attracting vectors.
- c. Litter is contained within the storage area or unit.
- d. The discarded electronics and materials derived from discarded electronics are not broken CRTs or CRT glass.

**567—122.14(455B,455D) Operational requirements for permitted electronics recycling facilities.**

**122.14(1)** Collection requirements for electronics. All discarded electronics coming into the electronics recycling facility shall be collected in a manner that complies with the following requirements:

- a. Collection activities for discarded electronics shall occur in an area and through a process that minimizes the risk of hazardous conditions.
- b. Discarded electronics shall be collected and contained in a manner that is structurally adequate to prevent breakage and spillage under normal operating conditions, and that is compatible with the contents.
- c. CRT glass and CRTs that show evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents into the environment shall be collected in enclosed and separate containers from other discarded electronics.

**122.14(2)** Transportation requirements for electronics. All discarded electronics leaving the electronics recycling fa-

cility shall be transported in a manner that complies with the following requirements:

a. Discarded electronics shall be transported in a contained manner that is structurally adequate to prevent breakage and spillage under normal operating conditions, and that is compatible with the contents.

b. Containers or packages shall be labeled. Labeling shall specify the contents (e.g., CRTs, nonintact CRTs), point of origin, destination, and shipment date.

c. CRT glass and CRTs that show evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents into the environment shall be transported in enclosed and separate containers from other discarded electronics.

d. Discarded electronics shall be transported in compliance with state and federal Department of Transportation (DOT) regulations.

**122.14(3)** General operating requirements. All electronics recycling facilities shall comply with the following requirements:

a. Electronics refurbishing, electronics demanufacturing, and electronics processing shall be done in a specifically designated location within a facility.

b. Working conditions shall be in compliance with state and federal worker safety requirements.

**567—122.15(455B,455D) Further requirements for batteries for electronics recycling facilities.**

**122.15(1)** Electronics recycling facilities shall manage waste batteries derived from discarded electronics in a manner that prevents release of any hazardous material into the environment.

**122.15(2)** Any battery that shows evidence of leakage, spillage, or damage that could cause a release of hazardous material into the environment must be contained in a container that is compatible with the contents of the battery.

**122.15(3)** All batteries must be managed in accordance with all state and federal regulations.

**567—122.16(455B,455D) Further requirements for circuit boards for electronics recycling facilities.** Spent circuit boards are regulated as scrap metal when recycled and stored in containers sufficient to prevent a release into the environment and the circuit board contains only minor battery or mercury switching components. If minor batteries and mercury switching components are removed, the minor batteries or mercury switching components may be universal waste under 40 CFR Part 273 or a hazardous waste under 40 CFR Parts 261, 262, and 263.

**567—122.17(455B,455D) Further requirements for CRTs for electronics recycling facilities.**

**122.17(1)** Electronics recycling facilities shall manage CRT materials in a manner that prevents the release of any hazardous material or component into the environment as follows:

- a. An electronics recycling facility shall immediately clean up and contain any CRTs, CRT devices, and CRT glass that is unintentionally broken.
- b. An electronics recycling facility may disassemble or crush CRTs provided the handler crushes CRTs in a controlled manner.

**122.17(2)** All CRTs, CRT devices, and CRT glass must be managed in accordance with all state and federal regulations.

**567—122.18(455B,455D) Further requirements for removal and disposal of mercury-containing components for electronics recycling facilities.**



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**122.18(1)** Electronics demanufacturers and electronics processors that manage mercury-containing components may be considered hazardous waste generators. Precautions shall be taken to prevent the release of mercury.

**122.18(2)** All removed mercury-containing components shall be stored in a DOT-approved container and labeled with a label stating "hazardous waste-mercury" or "mercury components" in both English and the predominant language of any non-English-reading workers. Furthermore, the date when the first mercury-containing component was placed in the container shall be affixed on the container.

**122.18(3)** All mercury containers shall be sealed prior to shipment.

**122.18(4)** All mercury-containing components shall be managed at an EPA-approved mercury recycling or recovery facility.

**122.18(5)** Mercury-containing components must be managed in accordance with all state and federal regulations.

**567—122.19(455B,455D) Further requirements for removal and disposal of PCB capacitors for electronics recycling facilities.**

**122.19(1)** Electronics demanufacturers and electronics processors shall remove all capacitors not marked as non-PCB unless the manufacturer certifies in writing that no PCBs were used in the manufacture of the discarded electronics or capacitor.

**122.19(2)** All capacitors are assumed to contain PCBs unless proven otherwise by an approved laboratory, unless the words "No PCBs" have been imprinted on the body of the capacitor by the manufacturer, or unless the manufacturer certifies in writing that no PCBs were used in the manufacture of the discarded electronics or capacitor.

**122.19(3)** Capacitors that are proven not to contain PCBs may be recycled or disposed of as nonhazardous waste.

**122.19(4)** PCB capacitors shall be stored and transported in compliance with the Toxic Substances Control Act (TSCA; 40 CFR Part 761) and disposed of at a TSCA-permitted disposal facility. Facilities used for the storage of PCB items designated for disposal shall comply with the following requirements:

a. PCB items shall be stored in a manner that provides adequate protection from the elements and adequate secondary containment. Storage shall be over an impervious material.

b. All capacitors containing or suspected of containing PCBs shall be placed in a DOT-approved container that shows no signs of damage. The bottom of the container shall be filled to a depth of two inches with an absorbent material (e.g., oil-dry, kitty litter).

c. All DOT-approved containers shall be affixed with an EPA-approved 6- × 6-inch yellow label stating "PCBs" in both English and the predominant language of any non-English-reading workers (Reference: 40 CFR Part 761.45). Furthermore, the date when the first capacitor was placed in the container shall be affixed on the container.

d. All containers must be sealed prior to shipment.

e. Capacitors shall be stored for no more than 270 days.

**122.19(5)** An EPA-approved PCB transporter using an EPA Uniform Hazardous Waste form may be required to transport the labeled and dated container. The demanufacturer has one year from the first date entered on the container to have the contents buried at a TSCA landfill or incinerated at a TSCA disposal facility (Reference: 40 CFR Part 761.65). The burial or incineration must be documented and the rec-

ords kept by the demanufacturer for three years from the date the PCB waste was accepted by the initial transporter.

**567—122.20(455B,455D) Spills and releases at electronics recycling facilities.**

**122.20(1)** Any spills from leaking or cracked capacitors shall be handled by placing the capacitor or component containing the capacitor and any contaminated rags, clothing, absorbents, and soil into a DOT-approved container for PCBs for shipment to an EPA-approved PCB waste disposal facility. Spills of PCBs that occur outside a DOT-approved container shall be cleaned up pursuant to 40 CFR Part 761.125. Detailed records of such cleanups and sampling shall be maintained pursuant to 40 CFR Part 761.180.

**122.20(2)** Mercury spill kits, with a mercury absorbent in the kits, shall be readily available and immediately utilized in the event of a mercury spill. Any waste from the cleanup of a mercury spill shall be managed in accordance with state and federal rules.

**122.20(3)** Any hazardous condition shall be immediately contained and remedied with proper equipment and procedures pursuant to 567—Chapter 131 and the emergency response and remedial action plan (ERRAP) pursuant to rule 122.23(455B,455D). Within six hours of the release the department field office with jurisdiction over the spill or release location shall be notified.

**567—122.21(455B,455D) Electronics recycling facilities that shred electronics.** Electronics fluff from the shredding of discarded electronics shall be sampled quarterly, at a minimum, and analyzed according to Test Methods for Evaluation of Solid Waste, Physical-Chemical Methods SW 846, U.S. EPA, Third Edition 1986, or other method approved by the department, for the presence of PCBs. Electronics fluff from the shredding of discarded electronics shall be sampled quarterly at a minimum and analyzed for metals according to the toxicity characteristic leaching procedure (TCLP, EPA Method 1311). The fluff shall be sampled once per day for seven consecutive working days to make a composite sample. If the total PCB amount is less than 50 parts per million (ppm) and if the TCLP results demonstrate the electronics fluff is not hazardous, then the electronics fluff may be disposed of in a municipal solid waste (MSW) sanitary landfill in Iowa.

**567—122.22(455B,455D) Storage requirements for electronics recycling facilities.** All electronics recycling facilities shall store discarded electronics in compliance with the following requirements:

**122.22(1)** Discarded electronics and materials derived from discarded electronics shall be stored in a manner that minimizes the risk of a release into the environment.

**122.22(2)** Discarded electronics and materials derived from discarded electronics shall not be speculatively accumulated. Speculative accumulation occurs when a facility cannot demonstrate that the amount of discarded electronics and materials derived from discarded electronics leaving the facility within a 12-month time period is greater than 75 percent, by weight or volume, of the discarded electronics and materials derived from discarded electronics received by the facility within a 12-month time period.

**567—122.23(455B,455D) ERRAP requirements for electronics recycling facilities.** An electronics recycling facility shall develop, submit to the department for approval, and maintain on site a detailed emergency response and remedial action plan (ERRAP).

**122.23(1)** Submittal requirements. An updated ERRAP shall be included with any request for permit modification, to

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incorporate a facility expansion, or for significant changes in facility operation that require modification of the currently approved ERRAP.

**122.23(2)** Content. The content of ERRAP documents shall be concise and readily usable as a reference manual by facility managers and operators during emergency conditions. The ERRAP document content shall address at least the following primary issues in detail, unless project conditions render the specific issue as not applicable. To facilitate department review, the rationale for exclusion of any issues that are not determined to be applicable must be provided either in the body of the plan or as a supplement. Additional ERRAP requirements unique to the facility shall be addressed, as applicable.

- a. Facility information.
  - (1) Permitted agency.
  - (2) DNR permit number.
  - (3) Responsible individual and contact information.
  - (4) Facility description.
  - (5) Site and environs map.
- b. Regulatory requirements—reference to provisions of the permit.
- c. Emergency conditions—response activities—remedial action.
  - (1) Failure of utilities.
    1. Short-term (48 hours or less).
    2. Long-term (over 48 hours).
  - (2) Weather-related event.
    1. Tornado.
    2. Windstorms.
    3. Intense rainstorms.
    4. Lightning strikes.
    5. Flooding.
  - (3) Fire and explosions.
    1. Discarded electronics materials.
    2. Building and site.
    3. Equipment.
    4. Utilities.
    5. Working area.
    6. Evacuation.
  - (4) Regulated waste and hazardous material spills and releases.
    1. Collection.
    2. Transport.
    3. Working area.
    4. Storage.
  - (5) Emergency and release notifications and reporting.
    1. Federal agencies.
    2. State agencies.
    3. County and city agencies.
    4. Emergency response agencies.
    5. Special populations within 2 miles.
    6. Reporting requirements and forms.
  - (6) Emergency aid.
    1. Responder contacts.
    2. Medical services.
    3. Contracts and agreements.
  - (7) Primary emergency equipment inventory.
    1. Major equipment.
    2. Fire hydrants and water sources.
    3. Off-site equipment resources.
  - (8) ERRAP training requirements.
    1. Training providers.
    2. Employee orientation.

3. Annual training updates.
4. Training completion and record keeping.
- (9) Reference tables, figures and maps.

**567—122.24(455B,455D) Training requirements for electronics recycling facilities.**

**122.24(1)** General training. Beginning July 1, 2005, all employees of an electronics recycling facility involved in activities relevant to electronics recycling shall be trained on the following requirements and procedures as appropriate to the employees' specific job responsibilities:

- a. The requirements of this chapter.
- b. Standard operating procedures utilized by the electronics recycling facility, including:
  - (1) The proper method of loading and unloading discarded electronics and materials derived from discarded electronics.
  - (2) The proper collection, storage, and transportation requirements for discarded electronics and materials derived from discarded electronics.
  - (3) The proper disposal of discarded electronics and materials derived from discarded electronics.
  - (4) The proper management of batteries.
  - (5) The proper management of CRTs.
  - (6) The proper management of circuit boards.
  - (7) The proper management of mercury-containing components.
  - (8) The proper management of PCBs.
  - (9) Spill and release response procedures.
  - (10) Worker health and safety.
  - (11) Use of the department-approved ERRAP.

**122.24(2)** DNR-approved training course. Beginning July 1, 2005, electronics recycling facilities shall ensure that at least one employee directly involved in operations has completed a DNR-approved training course. At least one employee who has completed a DNR-approved course shall be on site when CRTs are being intentionally broken.

**567—122.25(455B,455D) Reporting requirements for electronics recycling facilities.** An electronics recycling facility shall maintain the following records for each calendar year and report this information to the department within 30 days of the end of that calendar year:

**122.25(1)** The total weight or number of materials received from nonpermitted sources, listed by product category. The product categories shall be:

- a. Monitors.
- b. Televisions.
- c. Central processing units (CPUs) and laptops.
- d. All other discarded electronics collected, but not mentioned above in aggregate.

**122.25(2)** The total aggregate weight or number of materials received from nonpermitted sources.

**122.25(3)** The percentage of materials covered by subrules 122.25(1) and 122.25(2) received from businesses and institutions.

**122.25(4)** The percentage of materials covered by subrules 122.25(1) and 122.25(2) received from households.

**122.25(5)** The total aggregate weight of shipments leaving the electronics recycling facility on a monthly basis.

**567—122.26(455B,455D) Record-keeping requirements for electronics recycling facilities.** All electronics recycling facilities shall maintain the following records, on a calendar-year basis, for three years:

**122.26(1)** The total aggregate weight and receipt date of each shipment of discarded electronics received from businesses, institutions, electronics collection facilities, short-

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

term electronics collection events, and other permitted electronics recycling facilities.

**122.26(2)** The name, address and contact information for shipments reported in subrule 122.26(1).

**122.26(3)** The total aggregate weight and date of each shipment leaving the electronics recycling facility.

**122.26(4)** The name and address of the facility receiving a shipment that left the electronics recycling facility, contact information for the receiving facility and a description of the shipment contents including all applicable bills of lading.

**122.26(5)** The type of service the receiving facility will provide to the electronics recycling facility.

**122.26(6)** All hazardous waste manifests.

**122.26(7)** Information related to the management of spills and releases pursuant to rule 122.20(455B,455D).

**122.26(8)** Information related to the management of electronics fluff pursuant to rule 122.21(455B,455D).

**122.26(9)** Information related to training requirements and a list of individuals who have received DNR-approved training pursuant to subrule 122.24(2).

**567—122.27(455B,455D) Closure requirements for electronics recycling facilities.** An electronics recycling facility shall submit to the department and department field office with jurisdiction over the facility written notice of intent to permanently close at least 60 days before closure. Closure shall be in conformance with the closure plan pursuant to paragraph 122.11(1)“n.” Closure shall not be official until the department field office with jurisdiction over the facility has given written certification of the proper disposal of all solid waste, discarded electronics, and materials derived from discarded electronics at the site.

These rules are intended to implement Iowa Code sections 455D.6(7) and 455B.304(1).

**ARC 3354B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” Iowa Administrative Code.

The proposed amendments reflect the statutory change to the definition of “regulatory agency” that now includes the Board. The proposed amendments also clarify that Board consent for a member or staff to sell a good or service to a person subject to the regulatory authority of the Board is a public record.

The proposed amendments do not contain a waiver provision as they are mandated by statute.

Any interested person may make written comments on the proposed amendments on or before June 1, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des

Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code Supplement sections 68B.2(23) and 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, sections 4 and 5.

The following amendments are proposed.

ITEM 1. Adopt **new** subrule 1.1(7) as follows:

**1.1(7)** The board is a “regulatory agency” as defined in Iowa Code Supplement section 68B.2(23) as amended by 2004 Iowa Acts, Senate File 2179, section 4.

ITEM 2. Adopt **new** subrule 1.7(5) as follows:

**1.7(5)** Public record. Consent granted under this rule shall be a public record and shall be made available for public inspection.

**ARC 3356B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment clarifies the different types of campaign committees that are required to file statements of organization.

The proposed amendment does not contain a waiver provision as the changes are mandated by statute.

Any interested person may make written comments on the proposed amendment on or before June 1, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement sections 68A.102 and 68A.201.

The following amendment is proposed.

Rescind subrule 4.3(1) and adopt **new** subrule 4.3(1) as follows:

**4.3(1)** Committee purpose. An organized campaign committee shall identify the purpose of the committee on the statement of organization. The purpose shall be indicated in part by designating the committee as one of the following types of committees:

Type 1 - A candidate’s committee for a statewide or legislative candidate or a judge standing for retention. This type of committee is referred to as a state candidate’s committee.

Type 2 - A political committee that expressly advocates for or against candidates at the state level or expressly advocates for or against a statewide ballot issue. This type of committee is referred to as a statewide PAC.

Type 3 - A state statutory political committee. This type of committee is referred to as a state party.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Type 4 - A county statutory political committee. This type of committee is referred to as a county central committee.

Type 5 - A candidate's committee for a candidate seeking county office. This type of committee is referred to as a county candidate's committee.

Type 6 - A candidate's committee for a candidate seeking city office. This type of committee is referred to as a city candidate's committee.

Type 7 - A candidate's committee for a candidate seeking school board or other political subdivision office except for a county or city office. This type of committee is referred to as a school board or other political subdivision candidate's committee.

Type 8 - A political committee that expressly advocates for or against candidates for county office. This type of committee is referred to as a county PAC.

Type 9 - A political committee that expressly advocates for or against candidates for city office. This type of committee is referred to as a city PAC.

Type 10 - A political committee that expressly advocates for or against candidates for school board or other political subdivision except for county or city candidates. This type of committee is referred to as a school board or other political subdivision PAC.

Type 11 - A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a local ballot issue committee.

**ARC 3353B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment corrects a cite to the statutory provision requiring county commissioners of elections to retain campaign disclosure reports.

The proposed amendment does not contain a waiver provision because the amendment merely corrects an incorrect cite to a statutory provision.

Any interested person may make written comments on the proposed amendment on or before June 1, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code Supplement section 68A.401(3).

The following amendment is proposed.

Amend subrule 4.8(3) as follows:

**4.8(3)** The board shall make the reports in subrule 4.8(2) available to the appropriate county commissioner of elections electronically via the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics). A county commissioner of elections who establishes an Internet link between a public computer in the commissioner's office and the board's Web site shall be deemed in compliance with the requirement in Iowa Code Supplement section 68A.401(2) 68A.401(3) to retain the reports.

**ARC 3355B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendments permit a candidate's committee to share information with another candidate's committee without violating the prohibition on a candidate-to-candidate in-kind contribution. The proposed amendments also clarify that a candidate may not donate campaign funds to a charitable organization when the candidate or a family member of the candidate is employed by the organization and would receive a direct financial benefit from the donation. Finally, the proposed amendments remove the requirement that the charitable organization be a 501(c)(3) organization as that requirement is not mandated by statute.

The proposed amendments do not contain a waiver provision as the changes are mandated by statute.

Any interested person may make written comments on the proposed amendments on or before June 1, 2004. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 514 E. Locust, Suite 104, Des Moines, Iowa 50309. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

The amendments are intended to implement Iowa Code Supplement sections 68A.301 and 68A.303 as amended by 2004 Iowa Acts, House File 2318, sections 4 and 5.

The following amendments are proposed.

ITEM 1. Amend subrule **4.25(1)**, paragraph “w,” as follows:

w. ~~Transfers of funds~~ *Donations* to charitable organizations which qualify for tax-exempt status under Section 501(c) of the Internal Revenue Service regulations *unless the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent is employed by the charitable organization and will receive a direct financial benefit from a donation.*

ITEM 2. Amend subrule **4.25(1)** by adopting **new** paragraph “bb,” as follows:

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

bb. The sharing of information in any format such as computer databases containing yard sign locations or lists of registered voters with another candidate's committee.

**ARC 3339B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

These amendments clarify and cross-reference existing policies, including the following:

- The HAWK-I eligibility decision is based primarily on information furnished by the family. This language matches Medicaid rules.
- Only the income of parents, spouses, and children who live together is counted.
- A new application form is not required to add an eligible person to an existing HAWK-I eligible group.
- A child may be reinstated once per enrollment period when the family fails to pay a HAWK-I premium during the month before the month for which the premium is intended. The premium must be paid in full within the month for which it is intended in order for the reinstatement to occur.
- Collection of HAWK-I overpayments is governed by Department policies in 441—Chapter 11.

These amendments do not provide for waivers in specified situations because they are technical changes that benefit the customers by explaining HAWK-I policy more clearly.

Any interested person may make written comments on the proposed amendments on or before June 2, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Amend rule 441—86.2(514I) as follows:

Amend the introductory paragraph as follows:

**441—86.2(514I) Eligibility factors.** *The decision with respect to eligibility shall be based primarily on information furnished by the applicant or recipient. A child must meet the following eligibility factors to participate in the HAWK-I program.*

Amend subrule **86.2(2)**, paragraph “a,” subparagraph (1), introductory paragraph, as follows:

(1) Earned income. The earned income of all parents, spouses, and children under the age of 19 who are not students *who are living together* shall be countable. Income shall be countable earned income when an individual produces it as a result of the performance of services. Earned

income is income in the form of a salary, wages, tips, bonuses, and commissions earned as an employee, or net profit from self-employment.

ITEM 2. Amend rule 441—86.3(514I) as follows:

Amend subrule 86.3(6) as follows:

**86.3(6)** Application not required.

a. An application shall not be required when a child becomes ineligible for Medicaid and the county office of the department makes a referral to the HAWK-I program, ~~in which case,~~ Form 470-3563 470-3565, HAWK-I Referral to the Healthy and Well Kids in Iowa (HAWK-I) Program, shall be accepted in lieu of an application. The original Medicaid application or the last review form that is on file in the county office of the department, whichever is more current, shall suffice to meet the signature requirements.

b. *A new application shall not be required when an eligible child is added to an existing HAWK-I eligible group.*

Amend subrule **86.3(11)**, first unnumbered paragraph, as follows:

In cases of founded falsification of information, the department may proceed with disenrollment in accordance with rule 441—86.7(514I) and require repayment *in accordance with 441—Chapter 11* for the amount that was paid to a health plan by the department.

ITEM 3. Amend subrule 86.8(4) as follows:

**86.8(4)** Reinstatement. A child may be reinstated once ~~in a 12-month~~ *per enrollment* period when the family fails to pay the premium by the last day of the month ~~prior to~~ *before* the month of coverage. However, the ~~reinstatement premium must occur~~ *reinstatement premium must be paid or postmarked* within the calendar month following the month of nonpayment and the premium must be paid in full ~~prior to~~ *in order for* reinstatement to occur.

ITEM 4. Amend subrule 86.10(7) as follows:

**86.10(7)** Failure to report changes. Any benefits paid during a period of time in which the child was ineligible due to unreported changes will be subject to recoupment *in accordance with 441—Chapter 11*.

**ARC 3334B****INSURANCE DIVISION[191]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 505.8 and 515F.5, the Insurance Division terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3106B**, proposing to amend Chapter 20, “Property and Casualty Insurance Rate and Form Filing Procedures,” Iowa Administrative Code.

The Notice proposed to amend Chapter 20 by adding a new rule specifying requirements for insurers that use credit reports, credit information or insurance scores with respect to certain lines of personal insurance to provide the Insurance Commissioner with the necessary information to ensure that the use of the credit reports or credit scores is in accordance with Iowa statutes and administrative rules. The proposed rule was a National Conference of Insurance Legislators (NCOIL) model.

The Division is terminating the rule making commenced in **ARC 3106B** due to the enactment of 2004 Iowa Acts, Senate File 2257.

**ARC 3357B****NATURAL RESOURCES  
DEPARTMENT[561]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 456A.24(5), the Iowa Department of Natural Resources hereby proposes to adopt new Chapter 11, “The Iowa Nature Store,” Iowa Administrative Code.

The new chapter is intended to establish a program through which the Department will acquire and sell merchandise designed to promote the mission of the Department to the public. This program may be accomplished through the awarding of a contract to a private business to establish and manage the sale and acquisition of merchandise, subject to the approval of the Department.

Any interested person may make written suggestions or comments on this proposed new chapter prior to June 3, 2004. Such written materials should be directed to Ross Harrison, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact Ross Harrison at (515)281-5973 or at the Wallace State Office Building.

Also, there will be a public hearing on Thursday, June 3, 2004, at 11 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code sections 456A.17 and 456A.24.

The following amendment is proposed.

Adopt **new** 561—Chapter 11 as follows:

**CHAPTER 11  
THE IOWA NATURE STORE**

**561—11.1(456A) Purpose.** This chapter establishes the Iowa nature store program. The Iowa nature store offers merchandise for sale to the public in order to promote the mission of the department to the public, to enhance public awareness, and to generate revenue in order to conserve and enhance the natural resources of Iowa.

**561—11.2(456A) The nature store.** The department shall acquire merchandise that is intended to further the purposes of this chapter as stated in 561—11.1(456A). This merchandise will be offered for resale to the public.

**11.2(1) Acquisition.** The department may enter into contracts with private vendors for the design, manufacture, or purchase of merchandise for resale.

**11.2(2) Sale.** Goods obtained by the department pursuant to this chapter shall be offered for resale to the general public at prices to be established at the discretion of the department. Items obtained pursuant to this chapter may be distributed without charge when the department determines that such a distribution serves the purposes of this chapter.

**11.2(3) Contracts for services.** If the department determines that all or any part of the Iowa nature store program can be best effectuated through the execution of a contract with one or more third parties, the contract shall be awarded pursuant to the provisions of 561—Chapter 14.

**561—11.3(456A) Funding.** The Iowa nature store shall be funded through the state conservation fund as established at Iowa Code section 456A.17. All revenues generated by the Iowa nature store, whether through the sale of merchandise or any other means, shall be deposited in the state conservation fund.

These rules are intended to implement Iowa Code sections 456A.17 and 456A.24.

**ARC 3362B****PETROLEUM UNDERGROUND  
STORAGE TANK FUND BOARD,  
IOWA COMPREHENSIVE[591]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455G.4(3) and 2004 Iowa Acts, House File 2401, section 4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby gives Notice of Intended Action to adopt new Chapter 14, “Aboveground Petroleum Storage Tank Fund,” Iowa Administrative Code.

Chapter 14 provides rules and procedures for the reimbursement of claims for the removal or upgrade of aboveground storage tank sites, pursuant to 2004 Iowa Acts, House File 2401, section 4.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on June 1, 2004. Interested persons may submit written or oral comments by contacting the Administrator to the UST Fund at 2700 Westown Parkway, Suite 320, West Des Moines, Iowa 50266, E-mail [Scott\\_Scheidel@aon.com](mailto:Scott_Scheidel@aon.com); telephone (515)225-9263; or facsimile (515)225-9361.

These rules do not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3361B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2004 Iowa Acts, House File 2401, section 4.

## ARC 3340B

### PHARMACY EXAMINERS BOARD[657]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76, 155A.6, and 272C.3, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The amendment was approved at the April 20, 2004, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment adds a registered pharmacist-intern to the list of those to whom an authorized pharmacist may delegate the administration of influenza and pneumococcal vaccines to adults. An authorized pharmacist is required to provide direct personal supervision when delegating such administration to a registered pharmacist-intern. Notice of Intended Action was submitted by the Board of Medical Examiners as **ARC 3289B**, published in the April 14, 2004, Iowa Administrative Bulletin, proposing to amend subrule 653—13.3(1), paragraph “c.”

The Board of Medical Examiners and the Board of Pharmacy Examiners jointly regulate the area of practice addressed by this rule. Neither Board feels it necessary or expedient to provide for waiver of the rule. Any deviation from the requirements of the rule would need to be negotiated and determined by both Boards.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on June 1, 2004. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

This amendment is intended to implement Iowa Code sections 147.76, 155A.3, 155A.4, 155A.6, and 272C.3.

The following amendment is proposed.

Amend subrule **8.33(1)**, paragraph “c,” as follows:

c. “Written protocol” means a physician’s order for one or more patients that contains, at a minimum, the following:

(1) A statement identifying the individual physician authorized to prescribe drugs and responsible for the delegation of administration of adult immunizations for influenza and pneumococcus;

(2) A statement identifying the individual authorized *pharmacists pharmacist*;

(3) A statement that forbids an authorized pharmacist from delegating the administration of adult immunizations to anyone other than another authorized pharmacist, *a registered pharmacist-intern under the direct personal supervision of the authorized pharmacist*, or a registered nurse;

(4) A statement identifying the vaccines that may be administered by an authorized pharmacist, the dosages, and the route of administration;

(5) A statement identifying the activities an authorized pharmacist shall follow in the course of administering adult immunizations, including:

1. Procedures for determining if a patient is eligible to receive the vaccine;

2. Procedures for determining the appropriate scheduling and frequency of drug administration in accordance with applicable guidelines;

3. Procedures for record keeping and long-term record storage including batch or identification numbers;

4. Procedures to follow in case of life-threatening reactions; and

5. Procedures for the pharmacist and patient to follow in case of reactions following administration.

(6) A statement that describes how the authorized pharmacist shall report the administration of adult immunizations, within 30 days, to the physician issuing the written protocols and to the patient’s primary care physician if one has been designated by the patient. In case of serious complications, the authorized pharmacist shall notify the physicians within 24 hours and submit a VAERS report to the bureau of immunizations, Iowa department of public health. (VAERS is the Vaccine Advisory Event Reporting System.) A serious complication is one that requires further medical or therapeutic intervention to effectively protect the patient from further risk, morbidity, or mortality.

## ARC 3332B

### TRANSPORTATION DEPARTMENT[761]

#### Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 401, “Special Registration Plates,” Iowa Administrative Code.

Rule 761—401.9(321) is being revised to implement 2003 Iowa Acts, chapter 105. This legislation changed the criteria for issuance of firefighter plates. Formerly, current or former members of fire departments were eligible to apply for firefighter plates. Under the legislation, only current members and retired members are eligible.

Definitions are added for “current” and “retired.” A current member must have a minimum of one year of service. A retired member must have ten years of service.

The amended rule defines “fire officer” and requires the signatures of both the fire chief and fire officer on the application form. The signatures must be original and notarized. The fire officer is second in command to the fire chief.

A current member who has firefighter plates will be required to submit a new application to renew the plates.

A new application will not be required in order to renew firefighter plates issued to a retired member if the initial application for firefighter plates is made after January 1, 2005. For firefighter plates issued to a retired member prior to January 1, 2005, a new application will be required in order to renew the firefighter plates until the plates have been renewed once after January 1, 2005.

These amendments do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

## TRANSPORTATION DEPARTMENT[761](cont'd)

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address [julie.fitzgerald@dot.state.ia.us](mailto:julie.fitzgerald@dot.state.ia.us).

5. Be received by the Director's Staff Division no later than June 1, 2004.

A meeting to hear requested oral presentations is scheduled for Thursday, June 3, 2004, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code Supplement section 321.34.

Proposed rule-making actions:

ITEM 1. Amend rule 761—401.9(321) as follows:

**761—401.9(321) Firefighter plates.**

**401.9(1)** *Initial application for firefighter plates.* Application for firefighter plates shall be submitted to the department on a form prescribed by the department. ~~The Both the fire chief and another fire officer~~ of the paid or volunteer fire department shall sign the application form, certifying that the applicant is a current or ~~former~~ *retired* member of the fire department. ~~If the chief cannot certify that the applicant is a former member, a person who has knowledge of the applicant's membership shall sign the application certifying~~

~~that fact.~~ *The signatures must be original and notarized. If the fire chief and fire officer deny an application, the department may conduct an investigation and make a determination to approve or deny the application.*

**401.9(2)** *Renewal of firefighter plates for a current member.* A new application is required in order to renew firefighter plates issued to a current member. The application shall be submitted to the county treasurer's office.

**401.9(3)** *Renewal of firefighter plates for a retired member.*

a. A new application is not required in order to renew firefighter plates issued to a retired member if the initial application for firefighter plates is made after January 1, 2005.

b. For firefighter plates issued to a retired member prior to January 1, 2005, a new application is required in order to renew firefighter plates until the plates have been renewed once after January 1, 2005. The application shall be submitted to the county treasurer's office.

**401.9(2) 401.9(4)** *Plates.* Firefighter plates are limited to five characters. Personalized plates are not available.

**401.9(5)** *Definitions.* The following definitions apply to this rule:

"Current" means a member who has at least one year of service and is in good standing, as determined by the fire chief.

"Fire officer" means a member of the same fire department as the applicant and who is second in command to the fire chief.

"Retired" or "officially retired" means a former member who has a minimum of ten years' total service in good standing, as determined by the fire chief.

ITEM 2. Amend **761—Chapter 401**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 35A.11, 321.34, 321.166 and 321L.1 and 1999 Iowa Acts, House File 200, House File 737, section 8, and Senate File 462, section 15 2003 Iowa Acts, chapter 105.



**ARC 3361B****PETROLEUM UNDERGROUND  
STORAGE TANK FUND BOARD,  
IOWA COMPREHENSIVE[591]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 455G.4(3) and 2004 Iowa Acts, House File 2401, section 4, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby adopts Chapter 14, "Aboveground Petroleum Storage Tank Fund," Iowa Administrative Code.

Chapter 14 provides rules and procedures for the reimbursement of claims for the removal or upgrade of aboveground storage tank sites, pursuant to 2004 Iowa Acts, House File 2401, section 4.

Pursuant to Iowa Code section 17A.4(2), the Board finds that Notice and public participation are impractical because this amendment is adopted pursuant to statutory authority effective April 20, 2004, when the Governor signed 2004 Iowa Acts, House File 2401, into law. 2004 Iowa Acts, House File 2401, provides authority to reimburse for the removal or upgrade of aboveground storage tanks that could pose a fire safety or health hazard. Benefits provided are retroactive to January 1, 2004, and expire February 18, 2005, necessitating expedient action.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Board finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective immediately upon filing with the Administrative Rules Coordinator because this amendment confers a benefit upon the public by providing for a monetary reimbursement benefit to assist with the removal of aboveground storage tanks that could pose a fire safety or health hazard.

This amendment is also published herein under Notice of Intended Action as **ARC 3362B** to allow for public comment.

These rules do not mandate additional combined expenditures exceeding \$100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services.

These rules are intended to implement 2004 Iowa Acts, House File 2401, section 4.

These rules became effective April 23, 2004.

The following **new** chapter is adopted.

**CHAPTER 14****ABOVEGROUND PETROLEUM STORAGE  
TANK FUND**

**591—14.1(455G) Eligible claims.** All claims eligible for benefits under 2004 Iowa Acts, House File 2401, section 4, will be subject to available funding. In order to be eligible for reimbursement, the claimant must prove the aboveground petroleum storage tank site for which benefits are sought was registered with the state fire marshal pursuant to Iowa Code section 101.22 on or before January 1, 2004. Failure to prove that registration occurred on or before January 1, 2004, to the satisfaction of the board, will render that site ineligible for benefits. These provisions do not confer a right upon any party.

**591—14.2(455G) Eligible claimants.** Only the owner of the aboveground petroleum storage tank site is eligible to receive benefits. The owner is the legal title holder to the real proper-

ty upon which the aboveground petroleum storage tank is located or to the tank site as defined in Iowa Code section 101.21.

**591—14.3(455G) Eligible tanks.** Eligible tanks are aboveground petroleum storage tanks containing petroleum as defined in Iowa Code section 455B.471. If the aboveground petroleum storage tank is empty, the last-known substance it contained must meet the definition of petroleum in Iowa Code section 455B.471.

**591—14.4(455G) Claim submission deadline.** Only owners that submit an application for reimbursement to the board on or before February 18, 2005, are eligible for benefits.

**591—14.5(455G) Form of claim.** The application for reimbursement must be in writing and made on a form provided by the board. Claims made orally, by telephone, or on a form other than that deemed acceptable by the board will be ineligible for benefits.

**591—14.6(455G) Eligible costs.** Only costs approved by the board or its designee will be eligible for reimbursement. No costs shall be reimbursed unless deemed by the board to be reasonable and necessary for the upgrade or permanent closure of an aboveground petroleum storage tank site.

**591—14.7(455G) Reimbursement limits.** Upon receiving appropriate documentation of eligible costs, and after board approval of the costs incurred, the board may reimburse the owner of the aboveground petroleum storage tank site up to \$25,000 per site. In no event, however, shall an owner be eligible for more than \$100,000 total for all aboveground petroleum storage tank sites eligible for benefits.

**591—14.8(455G) Upgrade expenses.** Only upgrade expenses incurred after January 1, 2004, and not later than February 18, 2005, are eligible for reimbursement. Only expenses reasonable and necessary to the installation or improvement of aboveground petroleum storage tank equipment or systems required to comply with 40 CFR Section 112 are eligible for reimbursement. Reasonable and necessary expenses include, but are not limited to, installation or upgrade of the following:

1. Secondary containment.
2. Corrosion protection.
3. Loss prevention.
4. Security.
5. Drainage.
6. Removal of noncompliant tanks.

**591—14.9(455G) Permanent closure expenses.** Only expenses incurred for permanent closure activities occurring after January 1, 2004, and not later than February 18, 2005, are eligible for reimbursement. Only expenses for activities reasonable and necessary to permanently close the aboveground petroleum storage tank site are eligible for reimbursement. Postclosure costs associated with activities to improve the aboveground petroleum storage tank site are not eligible for reimbursement. Reasonable and necessary activities eligible for reimbursement include, but are not limited to, the following:

1. Removal of the tank and tank piping system.
2. Removal of tank support and confinement systems.
3. Removal of security systems.
4. Disposal of waste petroleum and other waste material, including concrete.

**591—14.10(455G) Board approval of costs.** All expenses submitted to the board for reimbursement are subject to ap-

## PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

proval by the board prior to reimbursement. The board may deny reimbursement for any reason deemed by the board to be inconsistent with these rules.

**591—14.11(455G) Activities performed by the owner.** If an owner seeks reimbursement for expenses associated with activities performed by the owner, the owner's employer, an employee of the owner, or a relative of the owner, the owner is required to obtain prior approval from the board of the activities to be performed and the expenses to be incurred. Expenses for activities performed without prior approval by the board may be denied in their entirety at the sole discretion of the board.

**591—14.12(455G) Activities performed under contract.** If the owner of an aboveground petroleum storage tank site contracts with another individual or business entity to perform the upgrade or permanent closure activities, the expenses may be submitted to the board for approval upon completion of the work and payment to the contracting party. The board may deny any reimbursement request that does not have accompanying proof of payment in full to the contracting party. If an owner desires approval of costs from the board prior to incurring expenses, the owner may seek and obtain prior approval from the board of the activities to be performed and the expenses to be incurred.

**591—14.13(455G) Board contracts for permanent closure of sites.** The board may enter into contracts with quali-

fied businesses to perform permanent closure activities for eligible claims. The board may limit reimbursement to only those activities approved under the terms of the contracts, and reimbursement will be no more than \$25,000 per site and not more than \$100,000 per owner. The permanent closure activities under contract may occur and be reimbursed after February 18, 2005, provided the owner (1) timely applied for reimbursement, (2) emptied all tanks prior to February 18, 2005, or had all tanks in compliance with 40 CFR Section 112 by that date, (3) agreed in writing to allow the board to contract to complete the permanent closure at a time determined to be convenient to the board and (4) provides sufficient evidence, which may at a minimum consist of declinations from a contractor, that the activities were pursued by the owner during the eligible reimbursement period. Expenses for any activities completed after December 31, 2006, however, will not be eligible for reimbursement.

These rules are intended to implement 2004 Iowa Acts, House File 2401, section 4.

[Filed Emergency 4/23/04, effective 4/23/04]

[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

**ARC 3338B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby rescinds 401—Chapter 6, “Appeals,” 471—Chapter 6, “Contested Cases,” and 581—Chapter 26, “Contested Cases,” and adopts 11—Chapter 7, “Contested Cases,” Iowa Administrative Code.

The purpose of this rule making is to consolidate uniform rules on contested cases by rescinding comparable chapters adopted by the former departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services, and by adopting Chapter 7 under the new agency identification number 11 for the Department of Administrative Services.

Notice of Intended Action was published in the March 17, 2004, Iowa Administrative Bulletin as **ARC 3226B**. No public comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted April 21, 2004.

These amendments will become effective on June 16, 2004.

These amendments are intended to implement Iowa Code chapter 17A and Iowa Code Supplement chapter 8A.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 401—Ch 6, 471—Ch 6, 581—Ch 26; adopt 11—Ch 7] is being omitted. These amendments are identical to those published under Notice as **ARC 3226B**, IAB 3/17/04.

[Filed 4/22/04, effective 6/16/04]  
[Published 5/12/04]

[For replacement pages for IAC, see IAC Supplement 5/12/04.]

**ARC 3337B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby amends and transfers rules of the former Department of Revenue and Finance[701], Chapter 201, “Auditing Claims”; Chapter 202, “Accounting Procedures of Public Impact”; Chapter 203, “Employee Payroll Deductions ‘Charitable Organizations’”; Chapter 204, “Professional/Trade Dues Deductions”; and Chapter 210, “Prepayment of Expenses”; to Administrative Services Department[11], Chapter 41, “Auditing Claims”; Chapter 42, “Accounting Procedures of Public Impact”; Chapter 43, “Employee Payroll Deductions for Charitable Organizations”; Chapter 44, “Professional/Trade Dues Deductions”; and Chapter 48, “Prepayment of Expenses”; and amends 11—Chapter 103,

“State Employee Driving Guidelines,” Iowa Administrative Code.

The purpose of this rule making is to transfer accounting rules, which were formerly under the authority of and adopted by the Department of Revenue and Finance, because the responsibility for state accounting has been transferred by the 80th General Assembly to the Department of Administrative Services pursuant to Iowa Code Supplement sections 8A.502 to 8A.519. Amendments to the transferred chapters are solely editorial in nature. Chapter 103 is amended to add subrules on the use of personal vehicles for official state business and to change the term “work permit” to “temporary restricted license” to correspond to statutory language for the Department of Transportation.

Notice of Intended Action was published in the March 17, 2004, Iowa Administrative Bulletin as **ARC 3213B**. No public comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted April 21, 2004.

These amendments will become effective on June 16, 2004.

These amendments are intended to implement Iowa Code Supplement sections 8A.502 to 8A.519.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [transfer 701—Chs 201 to 204, 210 to 11—Chs 41 to 44, 48; amendments to Chs 41 to 44, 48, 103] is being omitted. These amendments are identical to those published under Notice as **ARC 3213B**, IAB 3/17/04.

[Filed 4/22/04, effective 6/16/04]  
[Published 5/12/04]

[For replacement pages for IAC, see IAC Supplement 5/12/04.]

**ARC 3341B****ENGINEERING AND LAND  
SURVEYING EXAMINING  
BOARD[193C]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 4, “Engineering Licensure,” and Chapter 5, “Land Surveying Licensure,” Iowa Administrative Code.

These amendments add information regarding the release of examination results.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3141B**. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board on April 15, 2004.

These amendments shall become effective June 16, 2004.

These amendments are intended to implement Iowa Code section 542B.15.

The following amendments are adopted.

ITEM 1. Amend subrule **4.1(8)** by adding the following new paragraph “g”:

## ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C](cont'd)

g. Release of examination results. Results of any examination shall only be reported as pass or fail except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

ITEM 2. Amend subrule **5.1(8)** by adding the following new paragraph "**h**":

h. Release of examination results. Results of any examination shall only be reported as pass or fail except that the candidate who fails an examination may be provided with the candidate's converted score and a diagnostic report indicating areas of weakness, as available.

[Filed 4/22/04, effective 6/16/04]

[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

## ARC 3360B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," and Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2776B**. Six public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from 26 persons and organizations. The majority of the comments were made concerning the numerical criteria for chloride and the numerical criterion for total dissolved solids (TDS). A responsiveness summary addressing the comments may be obtained from the Department of Natural Resources.

At the February 16, 2004, Environmental Protection Commission meeting, the Commission approved with some modification the amendments identified in numbered paragraphs 3 through 7 of the preamble of **ARC 2776B**. Paragraphs 3 through 5 involve amendments to the document "Surface Water Classification" referenced in subrule 61.3(5). Paragraph 6 involves amendments to the document "Protected Flows for Selected Iowa Streams" referenced in subrule 61.2(5). Paragraph 7 involves corrections to subrule cross references in subrule 61.2(5), paragraph "a." The Commission did not approve the amendments that would establish numerical water quality criteria for chloride and replace the current total dissolved solids (TDS) numerical criterion of 750 mg/l with a site-specific approach for establishing discharge limits for dissolved solids, Items 3 and 4 of **ARC 2776B**. At the March 15, 2004, Environmental Protection Commission meeting, the Commission considered further and rejected the proposed standards for chloride and TDS, with recommendations for future TDS/chloride rule-making efforts. Based on the February and March actions, the date changes for the "Protected Flows" and "Surface Water Classification" documents in subrules 61.2(5) and 61.3(5) and the

corrections in paragraph 61.2(5)"a" were Adopted and Filed and published in the April 14, 2004, Iowa Administrative Bulletin as **ARC 3281B**. However, a special EPC meeting was held on April 12, 2004, that rescinded the decisions made for the TDS issue at the March 15, 2004, meeting.

At the April 12, 2004, meeting, the Commission revised and approved a Final Rule that adopted various changes to the TDS criterion contained in the Water Quality Standards (WQS). The adopted changes differ from the criteria proposed in the Notice of Intended Action in that a specific chloride standard is not adopted. As proposed in the Notice, the current total dissolved solids (TDS) numerical criterion of 750 mg/l is being replaced with a site-specific approach for establishing discharge limits for dissolved solids. Upon application for a discharge permit or permit renewal, a facility will be required to clearly demonstrate that its discharge will not result in toxicity to the receiving stream. This documentation may require whole effluent toxicity (WET) tests and a chemical analysis of the effluent for selected cations and anions, including calcium, magnesium, potassium, sodium, chloride, sulfate, and iron as well as the measured TDS concentration. The rule-referenced document entitled "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised in March 2003, will be modified to reflect the new TDS approach and associated implementation details. The modification to the support document also requires that the date changes in subrules 61.2(4), 61.2(5) and 62.8(2) originally proposed in Item 1 of **ARC 2776B** be made.

The intent of the site-specific approach is to gather information based on six recommendations made by the EPC, as specified in **ARC 3281B**, published in the April 14, 2004, Iowa Administrative Bulletin. The Department will utilize the information gathered during the three-year period to propose a new standard by April 1, 2007.

These amendments may have an impact on small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments shall become effective June 16, 2004. The following amendments are adopted.

ITEM 1. Amend subrules **61.2(4)**, **61.2(5)** and **62.8(2)** by striking "July 16, 2003" and inserting the effective date of this amendment, "June 16, 2004."

ITEM 2. Amend subrule **61.3(2)**, paragraph "**g**," as follows:

~~g. Total dissolved solids shall not exceed 750 mg/l in any lake or impoundment or in any stream with a flow rate equal to or greater than three times the flow rate of upstream point source discharges. Acceptable levels of total dissolved solids (TDS) and constituent cations and anions will be established on a site-specific basis. The implementation approach for establishing the site-specific levels may be found in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.~~

[Filed 4/23/04, effective 6/16/04]

[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

**ARC 3350B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments clarify the following:

1. That a permanent organization involved in activities relating to the making of a loan or being owed a debt by a candidate or a committee is not required to register as a PAC.
2. That a candidate or candidate's committee may owe a debt to an insurance company or corporation so long as the debt is repaid and the transaction is properly disclosed.
3. That a financial institution is permitted to make a loan to a candidate or candidate's committee so long as the loan is repaid and the transaction is properly disclosed.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on March 3, 2004, as **ARC 3191B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on April 22, 2004.

These amendments are intended to implement Iowa Code Supplement sections 68A.402(6) and 68A.503.

These amendments will become effective on June 16, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.1(1)"c," 4.35, 4.47(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 3191B**, IAB 3/3/04.

[Filed 4/23/04, effective 6/16/04]  
[Published 5/12/04]

[For replacement pages for IAC, see IAC Supplement 5/12/04.]

**ARC 3351B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments clarify that the following are permissible uses of candidate campaign funds:

1. Bonuses paid to campaign workers.
2. Payments to family members of the candidate when the family members provide actual work or services to the campaign.
3. Gifts up to \$250 per person given to campaign workers in recognition of services provided.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on March 3, 2004, as **ARC 3189B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on April 22, 2004.

These amendments are intended to implement Iowa Code Supplement section 68A.302.

These amendments will become effective on June 16, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule **4.25(1)**, paragraph "**1**," as follows:

1. Payment of salaries, fringe benefits, *bonuses*, and payroll taxes of paid campaign staff. *Family members who perform actual work or services for a campaign may be compensated for such work or services.*

ITEM 2. Rescind subrule **4.25(1)**, paragraph "**z**," and insert the following new paragraph "**z**" in lieu thereof:

- z. Payment for items with a purchase price not to exceed \$250 per person that are presented to committee workers in recognition of services to the committee.

[Filed 4/23/04, effective 6/16/04]  
[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

**ARC 3349B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendments consolidate current rules 351—4.26(68A,68B) and 351—4.27(68A,68B) concerning the transfer of assets between candidate campaign committees in new rule 351—4.26(68A). The amendments also set out in new rule 351—4.27(68A) the procedural requirements for a person filing an independent expenditure statement.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on March 3, 2004, as **ARC 3190B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on April 22, 2004.

These amendments are intended to implement Iowa Code Supplement sections 68A.303 and 68A.404.

These amendments will become effective on June 16, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.26, 4.27] is being omitted. These

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

amendments are identical to those published under Notice as **ARC 3190B**, IAB 3/3/04.

[Filed 4/23/04, effective 6/16/04]  
[Published 5/12/04]

[For replacement pages for IAC, see IAC Supplement 5/12/04.]

## ARC 3348B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

The amendment clarifies that an executive branch lobbyist client shall file an executive branch lobbyist client report even if no compensation was paid to the client's lobbyist. Without the filing of such a report, the Board and the public will not know if no compensation was paid to the lobbyist or if the client failed to file a report which then triggers the initiation of compliance measures.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on March 3, 2004, as **ARC 3192B**. No oral or written comments on the amendment were received. This amendment is identical to that published under Notice.

The Board adopted the amendment on April 22, 2004.

This amendment is intended to implement Iowa Code section 68B.38.

This amendment will become effective on July 1, 2004.

The following amendment is adopted.

Amend subrule **8.9(1)**, paragraph "c," as follows:

c. The amount of all salaries, fees, retainers, and reimbursements paid by the client to each lobbyist for engaging in executive branch lobbying activities for the period commencing on July 1 of the previous year through June 30 of the current year. *A report shall be filed even if the client did not pay any compensation to the client's lobbyist. If no compensation was paid, the client shall disclose on the report \$0.00 as compensation paid.* In the case of a salaried position when executive branch lobbying is part of the individual's duties, the reportable salary shall be based on a pro-rata basis of time spent engaging in executive branch lobbying.

[Filed 4/23/04, effective 7/1/04]  
[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

## ARC 3352B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby

amends Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

2004 Iowa Acts, Senate File 2179, section 1, changes the due date for the filing of an executive branch lobbyist client report and also changes the information that needs to be disclosed on the report by requiring compensation anticipated to be paid to a lobbyist in addition to compensation actually paid. The amendments reflect those statutory changes. The amendments are necessary to remove possible confusion on the part of the regulated community if a different reporting date and different reporting information existed in statute and the Board's rules.

Pursuant to Iowa Code section 17A.4(2), the Board finds that notice and public participation prior to the adoption of these amendments is impracticable, as it is desirable to have the Board's rules on a filing due date and information to be disclosed on the applicable reports reflect current statutory requirements.

These amendments are intended to implement Iowa Code section 68B.38, as amended by 2004 Iowa Acts, Senate File 2179, section 13.

These amendments will become effective on July 1, 2004. The following amendments are adopted.

ITEM 1. Amend subrule **8.9(1)**, paragraph "c," as follows:

c. The amount of all salaries, fees, retainers, and reimbursements paid *or anticipated to be paid* by the client to each lobbyist for engaging in executive branch lobbying activities for the period commencing on July 1 of the previous year through June 30 of the current year. *A report shall be filed even if the client did not pay any compensation to the client's lobbyist. If no compensation was paid, the client shall disclose on the report \$0.00 as compensation paid.* In the case of a salaried position when executive branch lobbying is part of the individual's duties, the reportable salary shall be based on a pro-rata basis of time spent engaging in executive branch lobbying.

ITEM 2. Amend rule 351—8.9(68B) as follows:

Amend subrule 8.9(3) as follows:

**8.9(3)** Time of filing. An executive branch lobbyist client report shall be filed on or before July 1. The report must be physically received by the board on or before the report due date. If mailed, the report must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed reports must be submitted on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 68B.38 as amended by 2003 2004 Iowa Acts, House File 583, section 3 Senate File 2179, section 13.

[Filed Without Notice 4/23/04, effective 7/1/04]  
[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

**ARC 3344B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners amends Chapter 219, "Administrative and Regulatory Authority for the Board of Podiatry Examiners," and Chapter 220, "Licensure of Podiatrists"; rescinds Chapter 224, "Discipline for Podiatrists," and adopts a new Chapter 224 with the same title; and amends Chapter 225, "Fees," Iowa Administrative Code.

These amendments amend Board contact procedures for address and name changes, adopt subrules regarding conduct of persons who attend public meetings, amend license renewal requirements, set the fees charged for duplicate and reissued wallet cards and license certificates, adopt criteria for obtaining a reissued certificate or wallet card license, and adopt a new discipline chapter. Licensees who examine, attend, counsel or treat adults or children will be required at the time of license renewal to have completed a course approved by the Iowa Department of Public Health abuse education review panel regarding abuse identification and reporting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 17, 2004, as **ARC 3214B**. A public hearing was held on April 6, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One comment was received to retain language in subrule 220.9(1) clarifying the licensee's obligation to pay renewal fees. As a result, subrule 220.9(1) now reads as follows:

**"220.9(1)** The biennial license renewal period for a license to practice podiatry shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license. Failure to receive the renewal application shall not relieve the licensee of the obligation to pay the biennial renewal fees on or before the renewal date."

In addition, Item 6 in the Notice proposed to renumber rule 220.11(272C) as 220.13(272C) and adopt two new rules. Item 6 herein instead rennumbers 220.12(17A,147,272C) as 220.14(17A,147,272C) and adopts the two new rules that appeared in the Notice.

These amendments were adopted by the Board of Podiatry Examiners on April 9, 2004.

These amendments will become effective June 16, 2004.

These amendments are intended to implement Iowa Code chapters 21, 147, 149 and 272C.

**EDITOR'S NOTE:** Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [219.4, 219.6, Ch 219 impl. clause, 220.9, 220.12 to 220.14, Ch 224, 225.1] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3214B**, IAB 3/17/04.

[Filed 4/22/04, effective 6/16/04]  
[Published 5/12/04]

[For replacement pages for IAC, see IAC Supplement 5/12/04.]

**ARC 3343B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby amends Chapter 325, "Administrative and Regulatory Authority for the Board of Physician Assistant Examiners," and Chapter 326, "Licensure of Physician Assistants"; rescinds Chapter 329, "Discipline for Physician Assistants," and adopts new Chapter 329 with the same title; and amends Chapter 330, "Fees," Iowa Administrative Code.

The amendments amend the rule regarding public meetings by adopting subrules covering the conduct of persons who attend public meetings; amend Board contact procedures for address and name changes; modify language in the rules to be consistent with language in the Iowa Code; revise licensure renewal by adding mandatory reporter training requirements; define how to obtain duplicate or reissued licenses and wallet cards and the fees associated with duplicate or reissued licenses and wallet cards; and rescind the current discipline chapter and adopt a new discipline chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 18, 2004, as **ARC 3165B**. A public hearing was held on March 9, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building.

Public comments were received from the Assistant Attorney General which suggested that language be added to subrule 326.9(1) relating to a licensee's responsibility to pay the biennial renewal fee on or before the renewal date. In addition, the Assistant Attorney General suggested that subrule 329.2(2), paragraph "e," be changed to conform to statutory language and that subrule 329.2(6), paragraphs "a" and "b," be deleted since the issues are addressed in the new language of 329.2(2), paragraph "e." The wording in 329.2(2), paragraphs "b" and "c," was changed in response to public comment.

The following changes were made to the amendments published under Notice:

- In subrule 326.9(1), language was added relating to a licensee's responsibility to pay the biennial renewal fee on or before the renewal date.
- It was suggested that in subrule 329.2(2), paragraph "b," the word "practitioners" be changed to "physician assistants," and, in paragraph "c," the word "practitioner" be changed to "physician assistant."
- Subrule 329.2(2), paragraph "e," was changed using language recommended by the Assistant Attorney General.
- Paragraphs "a" and "b" of subrule 329.2(6) were not adopted on advice of the Assistant Attorney General.

These amendments were adopted by the Board of Physician Assistant Examiners on April 21, 2004.

These amendments will become effective June 16, 2004.

These amendments are intended to implement Iowa Code section 147.107 and chapters 148C and 272C.

The following amendments are adopted.

**ITEM 1.** Amend subrules 325.4(2) and 325.4(3) as follows:

**325.4(2)** Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee's *current* mailing address within 30 days after the change of address occurs.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**325.4(3)** Notice of change of name. Each licensee shall notify the board *in writing* of ~~any~~ a change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation reference for rule 645—325.6(17A) as follows:  
**645—325.6(17A 21)**

ITEM 3. Adopt **new** subrules 325.6(3) and 325.6(4) as follows:

**325.6(3)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**325.6(4)** Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 325** as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 148C, and 272C.

ITEM 5. Rescind rule 645—326.9(148C) and adopt the following **new** rule in lieu thereof:

**645—326.9(148C) License renewal.**

**326.9(1)** The biennial license renewal period for a license to practice as a physician assistant shall begin on October 1 and end on September 30 two years later. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license. Failure to receive the renewal application shall not relieve the licensee of the obligation to pay the biennial renewal fee on or before the renewal date.

**326.9(2)** An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

**326.9(3)** A licensee shall:

a. Meet the continuing education requirements of rule 645—328.2(148C) and the mandatory reporting requirements of subrule 326.9(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

**326.9(4)** Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment responsibilities, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the

previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 328.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

**326.9(5)** When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

**326.9(6)** A person licensed to practice as a physician assistant shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

**326.9(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 330.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 6. Renumber rules **645—326.12(272C)** to **645—326.16(148C)** as **645—326.14(272C)** to **645—326.18(148C)** and adopt the following **new** rules:

**645—326.12(147) Duplicate certificate or wallet card.**

**326.12(1)** A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

**326.12(2)** A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—330.1(148C).

**326.12(3)** If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

**645—326.13(147) Reissued certificate or wallet card.** The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—330.1(148C).

ITEM 7. Rescind 645—Chapter 329 and adopt the following **new** chapter in lieu thereof:



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

CHAPTER 329  
DISCIPLINE FOR PHYSICIAN ASSISTANTS**645—329.1(148C) Definitions.**

“Board” means the board of physician assistant examiners.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means a person licensed to practice as a physician assistant in Iowa.

**645—329.2(148C,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—329.3(272C) when the board determines that the licensee is guilty of any of the following acts or offenses.

**329.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**329.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other physician assistants in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average physician assistant acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a physician assistant in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

**329.2(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

**329.2(4)** Practice outside the scope of the profession.

**329.2(5)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

**329.2(6)** Habitual intoxication or addiction to the use of drugs.

**329.2(7)** Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

**329.2(8)** Falsification of client records.

**329.2(9)** Acceptance of any fee by fraud or misrepresentation.

**329.2(10)** Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**329.2(11)** Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**329.2(12)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**329.2(13)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**329.2(14)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**329.2(15)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**329.2(16)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

**329.2(17)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**329.2(18)** Failure to comply with a subpoena issued by the board, or to otherwise fail to cooperate with an investigation of the board.

**329.2(19)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**329.2(20)** Failure to pay costs assessed in any disciplinary action.

**329.2(21)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**329.2(22)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**329.2(23)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a physician assistant.

**329.2(24)** Failure to report a change of name or address within 30 days after it occurs.

**329.2(25)** Representing oneself as a physician assistant when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

**329.2(26)** Permitting another person to use the licensee's license for any purpose.

**329.2(27)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**329.2(28)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

a. Verbally or physically abusing a patient or client or coworker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

**329.2(29)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

**329.2(30)** The performance of a medical function without approved supervision except in cases requiring performance of evaluation and treatment procedures essential to providing an appropriate response to an emergency situation.

**645—329.3(147,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

**645—329.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

These rules are intended to implement Iowa Code chapters 147, 148C and 272C.

ITEM 8. Amend subrule 330.1(6) as follows:

**330.1(6)** Duplicate or reissued license certificate fee is \$10.

ITEM 9. Renumber subrules **330.1(7)** to **330.1(9)** as **330.1(8)** to **330.1(10)** and adopt the following new subrule:

**330.1(7)** Duplicate or reissued wallet card fee is \$10.

[Filed 4/22/04, effective 6/16/04]

[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

## ARC 3345B

PROFESSIONAL LICENSURE  
DIVISION[645]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistant Examiners hereby amends Chapter 326, "Licensure of Physician Assistants," and Chapter 327, "Practice of Physician Assistants," Iowa Administrative Code.

The amendments update and clarify the rules covering the practice of physician assistants.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 18, 2004, as **ARC 3166B**. A public hearing was held on March 10, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building.

Public comments suggested that the proposed amendments clarify physician assistant practice and seemed consistent with statutory authority, but some areas needed additional clarification. A question was raised regarding the use of "delegate" rather than the use of "assist" and "assigned" in the existing rules. The Board noted that the term "delegate" is used in statute and that this change reflects an effort to make the rules more consistent with statute. There was a discussion of the following: the removal of the phrase "common to the physician's practice" in the introductory paragraph of subrule 327.1(1); the change in wording in paragraph "g" of that same subrule; the reason that Items 3 and 4 were proposed in the Notice, since proposed subparagraph 327.1(1)"s"(8) in Item 3 and the rescission of paragraph 327.1(1)"z" in Item 4 seemed to limit physician assistants' practice; the reason that Item 6, the rescission of subrule 327.3(1), was proposed; and the wording of paragraph "c" of subrule 327.4(1) and the wording of subrule 327.6(2).

The following changes were made to the amendments published under Notice:

- The wording of the introductory paragraph of subrule 327.1(1) was changed to clarify that the supervising physician delegates tasks after determining the physician assistant's proficiency and competence.

- The wording of subrule 327.1(1), paragraph "g," was changed in response to public comment to clarify that the supervising physician delegates tasks after determining the physician assistant's proficiency and competence.

- In response to public comment, the Board decided not to adopt the amendments proposed in Items 3 and 4 of the Notice because new subparagraph 327.1(1)"s"(8) and the rescission of paragraph 327.1(1)"z" would have inappropriately limited a physician assistant's practice.

- Language was added to subrule 327.4(1), paragraph "c," in response to public comment.

- Subrule 327.6(2) was changed in response to public comment and to conform to statute.

These amendments were adopted by the Board of Physician Assistant Examiners on April 21, 2004.

These amendments will become effective June 16, 2004.

These amendments are intended to implement Iowa Code section 147.107 and chapters 148C and 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—326.1(148C)**, definition of "remote medical site," as follows:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Remote medical site” means a medical clinic for ambulatory patients which is away from the main practice location of a supervising physician and in which a supervising physician is present less than 50 percent of the time the site is open. “Remote medical site” will not apply to nursing homes, patient homes, hospital outpatient departments, *outreach clinics*, or any location at which medical care is incidentally provided (e.g., diet center, free clinic, site for athletic physicals, jail facility).

ITEM 2. Amend subrule 327.1(1), introductory paragraph and paragraphs “e,” “g,” and “k,” as follows:

**327.1(1)** The medical services to be provided by the physician assistant are those delegated by a supervising physician. The ultimate role of the physician assistant cannot be rigidly defined because of the variations in practice requirements due to geographic, economic, and sociologic factors. The high degree of responsibility a physician assistant may assume requires that, at the conclusion of the formal education, the physician assistant possess the knowledge, skills and abilities necessary to provide those services appropriate to the practice setting. The physician assistant’s services may be utilized in any clinical settings including, but not limited to, the office, the ambulatory clinic, the hospital, the patient’s home, extended care facilities and nursing homes. Diagnostic and therapeutic medical tasks common to the physician’s practice may be assigned *delegated* to the physician assistant *by after a supervising physician determines after the physician assistant’s demonstration of proficiency and competence.* The medical services to be provided by the physician assistant include, but are not limited to, the following:

e. Performance of ~~office~~ surgical procedures including, but not limited to, skin biopsy, mole or wart removal, toenail removal, removal of a foreign body, arthrocentesis, incision and drainage of abscesses.

g. ~~Prenatal and postnatal care and assisting a physician in obstetrical care.~~ *Obstetrical care as delegated by the supervising physician after the physician determines the physician assistant’s proficiency and competence to provide these services.*

k. ~~Assisting a physician~~ *Function* in the hospital setting by performing medical histories and physical examinations, making patient rounds, recording patient progress notes and other appropriate medical records, assisting in surgery, performing or assisting with medical procedures, providing emergency medical services and issuing, transmitting and executing patient care orders ~~of as delegated by the supervising physician.~~

ITEM 3. Amend subparagraphs **327.1(2)“d”(2)** and **(3)** as follows:

(2) A physician assistant who serves on a basic ambulance or rescue squad service; ~~or and~~

(3) ~~Physician assistants~~ *A physician assistant who render renders aid within their the physician assistant’s skills during an emergency.*

ITEM 4. Rescind subrule **327.3(1)** and renumber subrules **327.3(2)** and **327.3(3)** as **327.3(1)** and **327.3(2)**.

ITEM 5. Rescind rule 645—327.4(148C) and adopt the following new rule in lieu thereof:

**645—327.4(148C) Remote medical site.**

**327.4(1)** A physician assistant may provide medical services in a remote medical site if one of the following three conditions is met:

a. The physician assistant has a permanent license and at least one year of practice as a physician assistant; or

b. The physician assistant with less than one year of practice has a permanent license and meets the following criteria:

(1) The physician assistant has practiced as a physician assistant for at least six months; and

(2) The physician assistant and supervising physician have worked together at the same location for a period of at least three months; and

(3) The supervising physician reviews patient care provided by the physician assistant at least weekly; and

(4) The supervising physician signs all patient charts unless the medical record documents that direct consultation with the supervising physician occurred; or

c. The physician assistant and supervising physician provide a written statement sent directly to the board that the physician assistant is qualified to provide the needed medical services and that the medical care will be unavailable at the remote site unless the physician assistant is allowed to practice there. In addition, for three months the supervising physician must review patient care provided by the physician assistant at least weekly and must sign all patient charts unless the medical record documents that direct consultation with the supervising physician occurred.

**327.4(2)** A supervising physician must visit a remote site to provide additional medical direction, medical services and consultation at least every two weeks or less frequently as specified in special circumstances. When visits are less frequent than every two weeks in unusual or emergency circumstances, the board shall be notified in writing of these circumstances.

ITEM 6. Amend paragraph **327.6(1)“f”** as follows:

f. ~~Any prescription for controlled substances prescribed by the physician assistant shall contain the~~ *The Drug Enforcement Administration (DEA) number of the physician assistant if the prescription is for a controlled substance.*

ITEM 7. Amend subrule 327.6(2) as follows:

**327.6(2)** Each oral prescription drug order issued by a physician assistant shall include the same information required for a written prescription, except for the written signature ~~of the physician assistant~~ and ~~the~~ address of the practitioners.

[Filed 4/22/04, effective 6/16/04]

[Published 5/12/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

**ARC 3333B**

**RACING AND GAMING  
COMMISSION[491]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 3, “Fair Information Practices,” Chapter 4, “Contested Cases and Other Proceedings,” Chapter 5, “Track and Excursion Boat Licensees’ Responsibilities,” Chapter 6, “Occupational and Vendor Licensing,”

## RACING AND GAMING COMMISSION[491](cont'd)

Chapter 8, "Wagering and Simulcasting," and Chapter 12, "Accounting and Cash Control," Iowa Administrative Code.

Item 1 allows for security plans, surveillance plans and internal controls of the licensees to remain confidential.

Item 2 allows for the appointment by the administrator of an employee to assist and advise the board of stewards.

Item 3 allows the Commission access to licensed employees' drug testing results.

Item 4 removes the rule that would not allow a farrier to be licensed in more than one capacity.

Item 5 requires a hearing to be held on any individual whose license would still be effective after a 365-day suspension.

Item 6 clarifies when a kennel/stable name license is required.

Item 7 reflects current practice regarding close of wagering.

Items 8 and 9 establish rules for credit and ticket payouts.

These amendments are identical to the ones published under Notice of Intended Action in the February 4, 2004, Iowa Administrative Bulletin as **ARC 3130B**.

A public hearing was held on February 24, 2004. No comments were received.

These amendments will become effective June 16, 2004.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [3.13(2)"j," 4.6(5)"c," 5.4(14)"b," 6.2(3)"b"(1), 6.6(2), 6.17(2), 8.2(15)"a," 12.14, 12.14(6), 12.14(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 3130B**, IAB 2/4/04.

[Filed 4/21/04, effective 6/16/04]

[Published 5/12/04]

[For replacement pages for IAC, see IAC Supplement 5/12/04.]

**ARC 3346B****REGENTS BOARD[681]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby amends Chapter 3, "Personnel Administration," Iowa Administrative Code.

This amendment is intended to correct an administrative error. In 2002, this subrule was inadvertently submitted for revision while still in discussion draft form. Since it was part of a large group of rules being proposed for revision, this error was overlooked. The complete group of rules was ultimately adopted, including the discussion draft version. This error was recently discovered, and this amendment returns the language of this rule to its original state.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 3, 2004, as **ARC 3210B**. No public comment was received on this amendment. This amendment is identical to that published under Notice.

The amendment was adopted by the Board on April 21, 2004.

This amendment is intended to implement Iowa Code chapter 8A.

This amendment will become effective on June 16, 2004.

The following amendment is adopted.

Amend subrule 3.39(13) as follows:

**3.39(13)** Pay for trainees and apprentices. *The schedule of wages for trainees and apprentices will consist of a step in the pay matrix for every year of training required.* Each employee whose performance is satisfactory as determined by the employing department will progress one-half of the value of a step every six months from the ~~minimum~~ *first step* of the ~~pay-grade schedule~~ to the entrance rate established for the journey class at the completion of time established for training or apprenticeship.

[Filed 4/23/04, effective 6/16/04]

[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.

**ARC 3335B****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on April 21, 2004, adopted an amendment to Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the March 17, 2004, Iowa Administrative Bulletin as **ARC 3211B**.

The Code of Federal Regulations was updated in October 2003, and the Department needs to cite the current version in these rules. No changes to the federal regulations have occurred.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 327B.

This amendment will become effective June 16, 2004.

Rule-making action:

Amend rule 761—529.1(327B) as follows:

**761—529.1(327B) Motor carrier regulations.** The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, 2002 2003, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

[Filed 4/21/04, effective 6/16/04]

[Published 5/12/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/12/04.







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